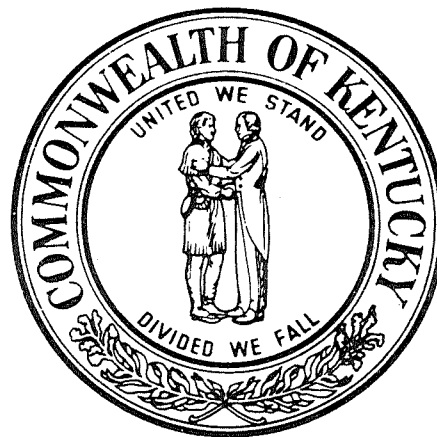


LEGISLATIVE RESEARCH COMMISSION
FRANKFORT, KENTUCKY

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SUNDAY, JANUARY 1, 1989



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UNLESS WRITTEN NOTIFICATION OF INTENT TO ATTEND
A PUBLIC HEARING IS RECEIVED BY THE PROMULGATING
AGENCY AT LEAST FIVE (5) DAYS BEFORE THE HEARING
DATE, THE HEARING MAY BE CANCELLED.

MEETING NOTICE: The next meeting of the Administrative Regulation
Review Subcommittee is tentatively scheduled on January 4, 1989. See
tentative agenda on pages 1627-1628 of this Administrative Register. 3

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Title		Chapter		Regulation
806	KAR	50	:	155
Cabinet, Department, Board or Agency		Bureau, Division, or Major Function		Specific Regulation

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ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
TENTATIVE AGENDA
January 4, 1988 ³
(Rm. 107, Capitol Annex @ 10 a.m.)

HIGHER EDUCATION ASSISTANCE AUTHORITY
Division of Program Administration

KHEAA Grant Programs

- 11 KAR 5:010. Authority, purpose, name of grant programs.
- 11 KAR 5:030. Student eligibility requirements.
- 11 KAR 5:120. Application by recipients of AFDC.
- 11 KAR 5:130. Student application.
- 11 KAR 5:140. Award determination procedure.
- 11 KAR 5:150. Notification of award.
- 11 KAR 5:160. Disbursement procedures.
- 11 KAR 5:170. Refund and repayment policy.
- 11 KAR 5:180. Records and reports.
- 11 KAR 5:190. Repeal of 11 KAR 5:020.

DEPARTMENT OF MILITARY AFFAIRS

National Guard

- 106 KAR 1:070. Standards for local disaster and emergency services organizations.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET

Department for Environmental Protection
Division for Air Quality

General Standards of Performance

- 401 KAR 63:045 and E. School asbestos abatement accreditations. (Amended After Hearing)
- 401 KAR 63:050 and E. Local education agencies. (Amended After Hearing)

CORRECTIONS CABINET

Office of the Secretary

- 501 KAR 6:030. Kentucky State Reformatory.
- 501 KAR 6:040. Kentucky State Penitentiary.
- 501 KAR 6:070 & E. Kentucky Correctional Institution for Women.
- 501 KAR 6:090. Frankfort Career Development Center.
- 501 KAR 6:120. Blackburn Correctional Complex.

TRANSPORTATION CABINET

Department of Vehicle Regulation

Motor Vehicle Tax

- 601 KAR 9:074. Kentucky highway use license, records and taxes.
- 601 KAR 9:130. Motor vehicle registration. (Repeals 601 KAR 9:013)

Driver Improvement

- 601 KAR 13:050. Alcohol driver education program.

Department of Highways

Traffic

- 603 KAR 5:230 & E. Bridge weight limits on the extended weight coal or coal by-products haul road system. (Repeals 603 KAR 5:210)

Mass Transportation

- 603 KAR 7:020. Nonurbanized public transportation program and elderly and handicap program. (Repeals 603 KAR 7:030)

EDUCATION AND HUMANITIES CABINET

Department of Education

Office of the Superintendent

- 701 KAR 5:060. Code of ethics for state testing program.

Office of Local Services

Pupil Transportation

- 702 KAR 5:030. Superintendents' responsibilities.
- 702 KAR 5:080. Bus drivers' qualifications; responsibilities.

Office of Instruction

Instructional Services

- 704 KAR 3:345. Evaluation guidelines.

Student Services

- 704 KAR 7:080. Ride to the Center for the Arts Program Fund.

Elementary and Secondary Education Act

- 704 KAR 10:022. Elementary, middle and secondary schools standards.

Teacher Certification

- 704 KAR 20:005. Kentucky standards for preparation-certification of professional school personnel program approval.

- 704 KAR 20:175. Physical education at elementary level on high school certification.

- 704 KAR 20:198. Director of special education.

- 704 KAR 20:340. Endorsement for teachers of computer courses.

- 704 KAR 20:520. Health education at the elementary school level.

Office of Programs

Adult Education

- 709 KAR 1:080. Community education.

PUBLIC PROTECTION AND REGULATION CABINET
Harness Racing Commission

Harness Racing Rules

811 KAR 1:215. Kentucky standardbred development fund.

Department of Housing, Buildings, and Construction

Building Code

815 KAR 7:020. Building code.

Plumbing

815 KAR 20:020. Parts or materials list.

CABINET FOR HUMAN RESOURCES
Department for Health Services

Certificate of Need and Licensure

902 KAR 20:016 & E. Hospitals operation and services.

Controlled Substances

902 KAR 55:065. Return of prescription drugs prohibited, exceptions.

REGULATION REVIEW PROCEDURE

Filing and Publication

Administrative bodies shall file with the Regulations Compiler all proposed administrative regulations, public hearing information, tiering statement, regulatory impact analysis, fiscal note, and the federal mandate comparison. Those regulations received by the deadline required in KRS 13A.050 shall be published in the Administrative Register.

Public Hearing

The administrative body shall schedule a public hearing on proposed administrative regulations to be held not less than twenty (20) nor more than thirty (30) days following publication. The time, date, and place of the hearing and the name and address of the agency contact person shall be included on the last page of the administrative regulation when filed with the Compiler's office.

Any person interested in attending the scheduled hearing must submit written notification of such to the administrative body at least five (5) days before the scheduled hearing. If no written notice is received at least five (5) days before the hearing, the administrative body may cancel the hearing.

If the hearing is cancelled, the administrative body shall notify the Compiler of the cancellation. If the hearing is held, the administrative body shall submit within fifteen (15) days following the hearing a statement of consideration summarizing the comments received at the hearing and the administrative body's responses to the comments.

No transcript of the hearing need be taken unless a written request for a transcript is made, and the person requesting the transcript shall have the responsibility of paying for same. A recording may be made in lieu of a transcript.

Review Procedure

If a proposed administrative regulation is amended as a result of the public hearing, the amended version shall be published in the next Administrative Register; and following publication shall be reviewed by the Administrative Regulation Review Subcommittee at its next meeting. If a proposed administrative regulation is not amended as a result of the hearing or if the hearing is cancelled, the regulation shall be reviewed by the Administrative Regulation Review Subcommittee at its next meeting. After review by the Subcommittee, the regulation shall be referred by the Legislative Research Commission to an appropriate jurisdictional committee for a second review. The administrative regulation shall be considered as adopted and in effect as of adjournment on the day the appropriate jurisdictional committee meets or thirty (30) days after being referred by LRC, whichever occurs first.

EMERGENCY REGULATIONS NOW IN EFFECT

(NOTE: Emergency regulations expire 90 days from publication or upon replacement or repeal.)

STATEMENT OF EMERGENCY
806 KAR 17:065E

This emergency administrative regulation prescribes minimum standards for Medicare supplement insurance policies. Pursuant to 42 U.S.C. §1395ss, states are required to adopt new regulations setting minimum standards for Medicare supplement insurance. These new standards will, among other things, recognize the changes in Medicare which become effective January 1, 1989. Many insurers are already filing policy forms which they wish to effectuate on January 1, 1989. Therefore, an emergency administrative regulation under KRS 13A.190 is necessary to provide guidelines for the review of these Medicare supplement policies. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed with the Administrative Regulations Compiler on November 23, 1988.

WALLACE G. WILKINSON, Governor
LEROY MORGAN, Commissioner
THEODORE T. COLLEY, Secretary

PUBLIC PROTECTION AND REGULATION CABINET
Department of Insurance

806 KAR 17:065E. Minimum standards for Medicare supplement insurance policies.

RELATES TO: KRS 304.12-020, 304.14-500 to 304.14-550, 304.17-305, 304.17-318, 304.18-036, 304.18-095, 304.32-157, 304.32-165, 304.32-270, 304.38-193, 304.38-196, 304.38-200

STATUTORY AUTHORITY: KRS 304.2-110, 304.14-510, 304.32-250, 304.38-150

EFFECTIVE: November 23, 1988

NECESSITY AND FUNCTION: KRS 304.2-110 provides that the Commissioner of Insurance may make reasonable regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. KRS 304.14-510 provides that the Commissioner of Insurance may make reasonable regulations establishing minimum standards for Medicare supplement insurance policies. KRS 304.32-250 provides that the Commissioner of Insurance may make reasonable regulations which he deems necessary for the proper administration of KRS 304.32. KRS 304.38-150 provides that the Commissioner of Insurance may make reasonable regulations which he deems necessary for the proper administration of KRS 304.38. This regulation establishes minimum standards for Medicare supplement insurance policies.

Section 1. Definitions. For the purposes of this regulation:

(1) "Applicant" means:

(a) In the case of an individual Medicare supplement policy, the person who seeks to contract for insurance benefits; and

(b) In the case of a group Medicare supplement policy, the proposed certificate holder.

(2) "Certificate" means any certificate issued under a group Medicare supplement policy, which

certificate has been delivered or issued for delivery in this state.

(3) "Commissioner" means the Commissioner of the Kentucky Department of Insurance.

(4) "Insurance policy" means an insurance policy, a subscriber contract issued by a nonprofit hospital, medical-surgical, dental, and health service corporation, and an enrollee contract issued by a health maintenance organization.

(5) "Medicare supplement policy" means a group or individual policy of insurance, a subscriber contract issued by a nonprofit hospital, medical-surgical, dental, and health service corporation, or an enrollee contract issued by a health maintenance organization which is advertised, marketed, or designed primarily as a supplement to reimbursements under Medicare for the hospital, medical, or surgical expenses of persons eligible for Medicare by reason of age.

Section 2. Purpose, Applicability, and Scope.

(1) The purpose of this regulation is to provide for the reasonable standardization of coverages and simplification of terms and benefits of Medicare supplement policies, to facilitate public understanding and comparison of such policies, to eliminate provisions contained in such policies which may be misleading or confusing in connection with the purchase of such policies or in connection with the settlement of claims, and to provide for full disclosure in the sale of health insurance coverages to persons eligible for Medicare by reason of age.

(2) Except as otherwise provided, this regulation shall apply to:

(a) All Medicare supplement policies delivered or issued for delivery in this state on or after the effective date of this regulation; and

(b) All certificates issued under group Medicare supplement policies, which certificates have been delivered or issued for delivery in this state.

Section 3. Policy Definitions and Terms. No insurance policy subject to this regulation shall contain terms or definitions which do not conform to those in this section.

(1) "Accident," "accidental injury," or "accidental means" shall be defined to employ "result" language and shall not include words which establish an accidental means test or use words such as "external, violent, visible wounds" or similar words of description or characterization.

(a) The definition shall not be more restrictive than the following: "injury or injuries for which benefits are provided means accidental bodily injury sustained by the injured person which is a direct result of an accident, independent of disease or bodily infirmity or any other cause, and occurs while insurance coverage is in force."

(b) Such definition may provide that injury shall not include injuries for which benefits are provided or available under any workers' compensation, employer's liability, or similar law, or motor vehicle no-fault insurance plan, unless such a definition is prohibited by law.

(2) "Benefit," or "Medicare benefit," shall not be defined as more restrictive than as that defined in the Medicare program.

(3) "Convalescent nursing home," "extended care facility," or "skilled nursing facility" shall be defined in relation to its status, facilities, and available resources.

(a) A definition of such home or facility shall not be more restrictive than one requiring that it:

1. Be operated pursuant to law;

2. Be approved for payment of Medicare benefits or be qualified to receive such approval, if so requested;

3. Be primarily engaged in providing, in addition to room and board accommodations, skilled nursing care under the supervision of a duly licensed physician;

4. Provide continuous twenty-four (24) hours a day nursing service by or under the supervision of a registered graduate professional nurse (R.N.); and

5. Maintain a daily medical record of each patient.

(b) The definition of such home or facility may provide that such term not be inclusive of:

1. Any home, facility, or part thereof used primarily for rest;

2. A home or facility for the aged or for the care of drug addicts or alcoholics; or

3. A home or facility used primarily for the care and treatment of mental diseases or disorders, or custodial or educational care.

(4) "Health care expenses" means expenses of health maintenance organizations associated with the delivery of health care services which are analogous to incurred losses of insurers. Such expenses shall not include:

(a) Home office and overhead costs;

(b) Advertising costs;

(c) Commissions and other costs of acquiring insurance business;

(d) Taxes;

(e) Capital costs;

(f) Administrative costs; or

(g) Claims processing costs.

(5) "Hospital" may be defined in relation to its status, facilities, and available services or to reflect its accreditation by the Joint Commission on Accreditation of Hospitals.

(a) The definition of the term "hospital" shall not be more restrictive than one requiring that the hospital:

1. Be an institution operated pursuant to law;

2. Be primarily and continuously engaged in providing or operating, either on its premises or in facilities available to the hospital on a prearranged basis and under the supervision of a staff of duly licensed physicians, medical, diagnostic, and major surgical facilities for the medical care and treatment of sick or injured persons on an inpatient basis for which charges made; and

3. Provide twenty-four (24) hours nursing service by or under the supervision of registered graduate professional nurses (R.N.s).

(b) The definition of the term "hospital" may state that such term shall not include:

1. Convalescent homes, convalescent, rest, or nursing facilities;

2. Facilities primarily affording custodial, educational, or rehabilitative care;

3. Facilities for the aged, drug addicts, or alcoholics; or

4. Any military or veterans hospital or

soldiers home or any hospital contracted for or operated by any national government or agency thereof for the treatment of members or ex-members of the armed forces, except for services rendered on an emergency basis where a legal liability exists for charges made to the individual for such services.

(6) "Medicare" shall be defined in the policy. Medicare may be substantially defined as "the Health Insurance for the Aged Act, Title XVIII of the Social Security Amendments of 1965 as then constituted or later amended," or Title I, Part I of P.L. 89-97, as enacted by the 89th Congress of the United States of America and properly known as the Health Insurance for the Aged Act, as then constituted and any later amendments or substitutes thereof, or words of similar import.

(7) "Medicare eligible expenses" shall mean health care expenses of the kinds covered by Medicare, to the extent recognized as reasonable by Medicare. Payment of benefits by insurers for Medicare eligible expenses may be conditioned upon the same or less restrictive payment conditions, including determinations of medical necessity as are applicable to Medicare claims.

(8) "Mental or nervous disorders" shall not be defined more restrictively than a definition including neurosis, psychoneurosis, psychopathy, psychosis, or mental or emotional disease or disorder of any kind.

(9) "Nurses" may be defined so that the description of nurse is restricted to a type of nurse, such as a registered graduate professional nurse (R.N.), a licensed practical nurse (L.P.N.), or a licensed vocational nurse (L.V.N.). If the words "nurse," "trained nurse," or "registered nurse," are used without specific instruction, then the use of such terms requires the insurer to recognize the services of any individual who qualified under such terminology in accordance with the statutes and regulations administered by the Kentucky Board of Nursing.

(10) "Physician" may be defined by including the words such as "duly qualified physician" or "duly licensed physician." The use of such terms requires an insurer to recognize and to accept, to the extent of its obligations under the contract, all providers of medical care and treatment when such services are within the scope of the provider's licensed authority and are provided pursuant to applicable laws.

(11) "Sickness" shall not be defined to be more restrictive than the following: "sickness means sickness or disease of an insured person which first manifests itself after the effective date of insurance and while the insurance is in force." The definition may be further modified to exclude sicknesses or diseases for which benefits are provided under any workers' compensation, occupational disease, or employer's liability, or similar law.

Section 4. Prohibited Policy Provisions. (1) A Medicare supplement policy shall not contain a probationary or elimination period.

(2) No insurance policy may be advertised, solicited, or issued for delivery in this state as a Medicare supplement policy if such policy limits or excludes coverage by type of illness, or accident, treatment, or medical condition, except as follows:

(a) Foot care in connection with corns, calluses, flat feet, fallen arches, weak feet, chronic foot strain, or symptomatic complaints

of the feet;

(b) Mental or emotional disorders, alcoholism and drug addition, unless coverage for such conditions is purchased as an option;

(c) Illness, treatment, or medical condition arising out of:

1. War or act of war (whether declared or undeclared); participation in a felony, riot, or insurrection; service in the armed forces or units auxiliary thereto;

2. Suicide (sane or insane), attempted suicide, or intentionally self-inflicted injury; or

3. Aviation.

(d) Cosmetic surgery, except that cosmetic surgery shall not include reconstructive surgery when such service is incidental to or follows surgery resulting from trauma, infection, or other diseases or the involved body part;

(e) Care in connection with the detection and correction of manual or mechanical means of structural imbalance, distortion, or subluxation in the human body for purposes of removing nerve interference and the effect thereof, or such interference is the result of or related to distortion, misalignment, or subluxation of or in the vertebral column, except that such coverage must be provided to the extent required by law;

(f) Treatment provided in a governmental hospital; benefits provided under Medicare or other governmental program (except Medicaid), any state or federal workers' compensation, employer's liability for occupational disease, or any motor vehicle no-fault insurance law (except where prohibited by law); services rendered by employees of hospitals, laboratories, or other institutions; services performed by a member of the covered person's immediate family and services for which no charges normally made in the absence of insurance;

(g) Dental care or treatment;

(h) Eye glasses, hearing aids, and examination for the prescription or fitting thereof;

(i) Rest cures, custodial care, transportation, and routine physical examinations; or

(j) Territorial limitations outside the United States.

However, Medicare supplement policies shall not contain, when issued, limitations or exclusions of the type enumerated in paragraphs (a), (e), (i), or (j) of this subsection that are more restrictive than those of Medicare. Medicare supplement policies may exclude coverage for any expense to the extent of any benefit available to the insured under Medicare.

(3) No Medicare supplement policy may use waivers to exclude, limit, or reduce coverage or benefits for specifically named or described preexisting diseases or physical conditions.

(4) The terms "Medicare supplement," "medigap," and words of similar import shall not be used unless the policy is issued in compliance with KRS 304.14.500 to 304.14.550 and this regulation.

(5) No Medicare supplement insurance policy in force in this state shall contain benefits which duplicate benefits provided by Medicare.

Section 5. Minimum Benefit Standards. An insurance policy shall not be advertised, solicited, or issued for delivery in Kentucky as a Medicare supplement policy if it does not meet

the following minimum standards. These are minimum standards and do not preclude the inclusion of other provisions or benefits which are consistent with these standards.

(1) General standards. The following standards apply to Medicare supplement policies and are in addition to all other requirements of this regulation.

(a) A Medicare supplement policy shall not deny a claim for losses incurred more than six (6) months from the effective date of coverage for a preexisting condition. The policy shall not define a preexisting condition more restrictively than a condition for which medical advice was given or treatment was recommended by or received from a physician within six (6) months before the effective date of coverage.

(b) A Medicare supplement policy shall not indemnify against losses resulting from sickness on a different basis than losses resulting from accidents.

(c) A Medicare supplement policy shall provide that benefits designed to cover cost sharing amounts under Medicare will be changed automatically to coincide with any changes in the applicable Medicare deductible amount and copayment percentage factors. Premiums may be modified to correspond with such changes.

(d) A "noncancellable," "guaranteed renewable," or "noncancellable and guaranteed renewable" Medicare supplement policy shall not:

1. Provide for termination of coverage of a spouse solely because of the occurrence of an event specified for termination of coverage of the insured, other than nonpayment of premium; or

2. Be cancelled or nonrenewed by the insurer solely on the grounds of deterioration of health.

(e) Termination of a Medicare supplement policy shall be without prejudice to any continuous loss which commenced while the policy was in force, but the extension of benefits beyond the period during which the policy was in force may be predicated upon continuous total disability of the insured, limited to the duration of the policy benefit period, if any, or payment of the maximum benefits.

(2) Minimum benefit standards.

(a) Coverage for either all or none of Medicare Part A inpatient hospital deductible amount.

(b) Coverage for the daily copayment amount of Medicare Part A eligible expenses for the first eight (8) days per calendar year incurred for skilled nursing facility care.

(c) Coverage for the reasonable cost of the first three (3) pints of blood (or equivalent quantities of packed red blood cells, as defined under federal regulations) under Medicare Part A unless replaced in accordance with federal regulations.

(d)1. Until January 1, 1990, coverage for twenty (20) percent of the amount of Medicare eligible expenses under Part B regardless of hospital confinement, subject to a maximum calendar year out-of-pocket deductible of \$200 of such expenses and to a maximum benefit of at least \$5,000 per calendar year.

2. Effective January 1, 1990, coverage for the copayment amount of Medicare eligible expenses excluding outpatient prescription drugs under Medicare Part B regardless of hospital confinement up to a maximum out-of-pocket amount for Medicare Part B under the Medicare deductible amount.

(e) Effective January 1, 1990, coverage under

Medicare Part B for the reasonable cost of the first three (3) pints of blood (or equivalent quantities of packed red blood cells, as defined under federal regulations), unless replaced in accordance with federal regulations.

(f) Effective January 1, 1990, coverage for the copayment amount of Medicare eligible expenses for covered home intravenous therapy drugs (as determined by the Secretary of Health and Human Services) subject to the Medicare outpatient prescription drug deductible amount, if applicable.

(g) Effective January 1, 1990, coverage for the copayment amount of Medicare eligible expenses for outpatient drugs used in immunosuppressive therapy, subject to the Medicare outpatient prescription drug deductible, if applicable.

(4) Medicare eligible expenses. Medicare eligible expenses shall mean health care expenses of the kinds covered by Medicare, to the extent recognized as reasonable by Medicare. Payment of benefits by insurers for Medicare eligible expenses may be conditioned upon the same or less restrictive payment conditions, including determinations of medical necessity, as are applicable to Medicare claims.

Section 6. Standards for Claims Payment under Section 4081 of the Omnibus Budget Reconciliation Act of 1987 (P.L. 100-203). (1) Every person providing Medicare supplement policies shall comply with all provisions of Section 4081 of the Omnibus Budget Reconciliation Act of 1987 (P.L. 100-203).

(2) Compliance with the requirements set forth in subsection (1) of this section must be certified on the Medicare Supplement Insurance Experience Reporting Form.

Section 7. Loss Ratio Standards. (1) Medicare supplement policies shall return to policyholders in the form of aggregate benefits under the policy, for the entire period for which rates are computed to provide coverage, on the basis of incurred claims experience or incurred health care expenses where coverage is provided by a health maintenance organization on a service rather than reimbursement basis, and earned premiums for such period and in accordance with accepted actuarial principles and practices:

(a) At least seventy-five (75) percent of the aggregate amount of premiums earned in the case of group policies; and

(b) At least sixty (60) percent of the aggregate amount of premiums earned in the case of individual policies.

(c) All filings and rate schedules shall demonstrate that actual and expected losses in relation to premiums comply with the requirements of this section.

(2) Every person providing Medicare supplement policies in this state shall file annually its rates, rating schedule, and supporting documentation, including ratios of incurred losses to earned premiums by number of years of policy duration demonstrating that it is in compliance with the foregoing applicable loss ratio standards and that the period for which the policy is rated is reasonable in accordance with accepted actuarial principles and experience.

(3) For the purposes of this section, policy forms shall be deemed to comply with the loss

ratio standards if:

(a) For the most recent year, the ratio of incurred losses to earned premiums for policies or certificates which have been in force for three (3) years or more is greater than or equal to the applicable percentages contained in this section; and

(b) The expected losses in relation to premiums over the entire period for which the policy is rated comply with the requirements of this section.

An expected third year loss ratio which is greater than or equal to the applicable percentage shall be demonstrated for policies or certificates in force less than three (3) years.

(4) As soon as practicable prior to the effective date of Medicare benefit changes required by the Medicare Catastrophic Coverage Act of 1988, every person providing Medicare supplement policies in Kentucky shall file with the commissioner, in accordance with applicable filing procedures:

(a) Appropriate premium adjustments necessary to produce loss ratios as originally anticipated for the applicable Medicare supplement policies. Such supporting documents as necessary to justify the adjustment shall accompany the filing. Every person providing Medicare supplement policies to residents of Kentucky shall make such premium adjustments as are necessary to produce an expected loss ratio under such policies as will conform to the minimum loss ratio standards for Medicare supplement policies and which are expected to result in a loss ratio at least as great as that originally anticipated in the rates used to produce current premiums for such Medicare supplement policies. No premium adjustment which would modify the loss ratio experience under the policy other than the adjustments described in this subsection should be made with respect to a policy at any time other than upon its renewal date or anniversary date. Premium adjustments shall be in the form of refunds or premium credits and shall be made no later than upon renewal if a credit is given, or within sixty (60) days of the renewal date or anniversary date if a refund is provided to the insured or other person paying the premium. Premium adjustments shall be calculated for the period commencing with Medicare benefit changes; and

(b) Any appropriate riders, endorsements, or policy forms needed to accomplish the Medicare supplement insurance modification is necessary to eliminate benefit duplications with Medicare. Any such riders, endorsements, or policy forms shall provide a clear description of the Medicare supplement insurance benefits provided by the Medicare supplement policy.

Section 8. Filing Requirements for Out-of-state Group Policies. All group Medicare supplement policies and all certificates used under such policies in this state shall not be used in this state until filed with and approved by the commissioner.

Section 9. Required Disclosure Provisions. (1) General rules.

(a) Medicare supplement policies shall include a renewal, continuation, or nonrenewal provision. The language or specifications of such provision must be consistent with the type of insurance policy to be issued. Such provision shall be appropriately captioned, shall appear

on the first page of the policy, and shall clearly state the duration, where limited, or renewability and the duration of the term of coverage for which the policy is issued and for which it may be renewed.

(b) Except for riders or endorsements by which the insurer effectuates a request made in writing by the insured, exercises a specifically reserved right under a Medicare supplement policy, or is required to reduce or eliminate benefits to avoid duplication of Medicare benefits, all riders or endorsements added to a Medicare supplement policy after the date of issue or at reinstatement or renewal which reduce or eliminate benefits or coverage in the policy shall require a signed acceptance by the insured. After the date of policy issue, any rider or endorsement which increases benefits or coverage with a concomitant increase in premium during the policy term must be agreed to in writing signed by the insured, unless the benefits are required by the minimum standards for Medicare supplement policies, or if the increased benefits or coverage is required by law. Where a separate additional premium is charged for benefits provided in connection with riders or endorsements, such premium charge shall be set forth in the policy.

(c) A Medicare supplement policy which provides for the payment of benefits based on standards described as "usual and customary," "reasonable and customary," or words of similar import, shall include a definition of such terms and an explanation of such terms in its accompanying outline of coverage.

(d) If a Medicare supplement policy contains any limitations with respect to preexisting conditions, such limitations must appear as a separate paragraph of the policy and be labeled as "preexisting condition limitations."

(e) Medicare supplement policies or certificates shall have a notice prominently printed on the first page of the policy or certificate or attached thereto stating in substance that the policyholder or certificate holder shall have the right to return the policy or certificate within thirty (30) days of its delivery and to have the premium refunded if, after examination of the policy or certificate, the insured is not satisfied for any reason.

(f) Insurers issuing insurance policies and certificates thereunder covering accident and sickness and hospital or Medicare expenses or an expense incurred or indemnity basis, other than incidentally, to persons eligible for Medicare by reason of age shall provide to all applicants a Medicare supplement buyer's guide in the form developed jointly by the National Association of Insurance Commissioners and the Health Care Financing Administration. Delivery of the buyer's guide shall be made whether or not such policies or certificates are advertised, solicited, or issued as Medicare supplement policies as defined in this regulation. Delivery of the buyer's guide shall be made to the applicant at the time of application and acknowledgment of receipt of the buyer's guide shall be obtained by the insurer, except that direct response insurers shall deliver the buyer's guide to the applicant upon request, but not later than the time the policy is delivered.

(2) Notice requirements.

(a) As soon as practicable, but no later than thirty (30) days prior to the annual effective date of any Medicare benefit changes, every

insurer providing coverage to a resident of Kentucky under a Medicare supplement policy shall notify its insureds of modifications it has made to Medicare supplement policies. Such notice shall be in a format acceptable to the commissioner. For the years 1989 and 1990, and if prescription drugs are covered in 1991, such notice shall be in the format prescribed in Appendixes A, B, and C. In addition, such notice shall:

1. Include a description of revisions to the Medicare program and a description of each modification made to the coverage provided under the Medicare supplement insurance policy or contract; and

2. Inform each covered person as to when any premium adjustment is to be made due to changes in Medicare.

(b) The notice of benefit modifications and any premium adjustments shall be in outline form and in clear and simple terms so as to facilitate comprehension.

(c) Such notices shall not contain or be accompanied by any solicitation.

(3) Outline of coverage requirements for Medicare supplement policies.

(a) Insurers issuing Medicare supplement policies or certificates for delivery in this state shall provide an outline of coverage to all applicants at the time application is made and, except for direct response insurers, shall obtain an acknowledgment of receipt of such outline from the applicant.

(b) If an outline of coverage is provided at the time of application and the Medicare supplement policy or certificate is issued on a basis which would require revision of the outline, a substitute outline of coverage properly describing the policy or certificate must accompany such policy or certificate when it is delivered and contain the following statement, in no less than twelve (12) point type immediately above the insurer's name:

"NOTICE: READ THIS OUTLINE OF COVERAGE CAREFULLY. IT IS NOT IDENTICAL TO THE OUTLINE OF COVERAGE PROVIDED UPON APPLICATION AND THE COVERAGE ORIGINALLY APPLIED FOR HAS NOT BEEN ISSUED."

(c) The outline of coverage provided to applicants pursuant to this subsection shall be in the form prescribed below:

(INSURER NAME)

OUTLINE OF MEDICARE SUPPLEMENT COVERAGE

1. Read your policy carefully - this outline of coverage provides a very brief description of the important features of your policy. This is not the insurance contract and only the actual policy provisions will control. The policy itself sets forth in detail the rights and obligations of both you and your insurance company. It is, therefore, important that you READ YOUR POLICY CAREFULLY!
2. Medicare supplement coverage - policies of this category are designed to supplement Medicare by covering some hospital, medical, and surgical services which are partially covered by Medicare. Coverages provided for hospital inpatient charges and some physician charges, subject to any deductibles and copayment provisions which may be in addition to those provided by Medicare, and subject to other limitations which may be set forth in the policy. The policy does not provide

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- benefits for custodial care such as help in walking, getting in and out of bed, eating, dressing, bathing, and taking medicine (this final sentence may be deleted if coverage for custodial care is, in fact, provided).
3. a. (for agents)
Neither (insert insurer's name) nor its agents are connected with Medicare.
 - b. (for direct response insurers:)
(insert insurer's name) is not connected with Medicare.
 4. A brief summary of the major medical benefit gaps in Medicare Parts A and B with a parallel description of supplemental benefits, including dollar amounts (and indexed copayments or deductibles as appropriate), provided by Medicare supplement coverage in the following order:

PARTS A & B
Home Health Services

PART B
Medical Expense:
Services of a Physician/Outpatient Services
Medical Supplies other than Prescribed Drugs
Blood
Mammography Screening
Out-of-pocket Maximum
Prescription Drugs

MISCELLANEOUS
Home IV-Drug Therapy
Immunosuppressive Drugs
Respite Care Benefits

DESCRIPTION	THIS POLICY PAYS	YOU PAY
SERVICE		

IN ADDITION TO THIS OUTLINE OF COVERAGE, (INSURANCE COMPANY NAME) WILL SEND AN ANNUAL NOTICE TO YOU 30 DAYS PRIOR TO THE EFFECTIVE DATE OF MEDICARE CHANGES WHICH WILL DESCRIBE THESE CHANGES AND THE CHANGES IN YOUR MEDICARE SUPPLEMENT COVERAGE.

5. (The following charts shall accompany the outline of coverage:)

PART A
Inpatient Hospital Services:
Semi-private Room & Board
Miscellaneous Hospital Services
& Supplies, such as Drugs,
X-rays, Lab Tests & Operating
Room
Skilled Nursing Facility Care
Blood

Part A MEDICARE BENEFITS IN

Service	1988	1989	1990	1991
PART A				
Inpatient Hospital Services:	All but \$540 for first 60 days/ benefit period	All but (\$564) deductible for an unlimited number of days/calendar year	All but Part A deductible for an unlimited number of days/calendar year	All but Part A deductible for an unlimited number of days/calendar year
Semi-private Room & Board	All but \$135 a day for 61st-90th days/ benefit period			
Miscellaneous Hospital Services & Supplies, such as Drugs, X-rays, Lab Tests & Operating Room	All but \$270 a day for 91st-150th days (if the individual chooses to use 60 nonrenewable life-time reserve days)			
	Nothing beyond 150 days			
Skilled Nursing Facility Care	100% of costs for 1st 20 days (after a 3 day prior hospital confinement)	80% of Medicare reasonable costs for first 8 days per calendar year w/out prior hospitalization requirement	80% for 1st 8 days/ calendar year	80% for 1st 8 days/ calendar year
	All but \$67.50 a day for 1st-100th days			

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	Nothing beyond 100 days	100% of costs thereafter up to 150 days/calendar year	100% for 9th-150th day/calendar year	100% for 9th-150th day/calendar year
Blood	Pays all costs except nonreplacement fees (blood deductible) for first 3 pints in each benefit period	Pays all costs except payment of deductible (equal to costs for first 3 pints) each calendar year. Part A blood deductible reduced to the extent paid under Part B	All but blood deductible (equal to costs for first 3 pints)	All but blood deductible (equal to costs for first 3 pints)

Part B MEDICARE BENEFITS IN

Service	1988	1989	1990	1991
PARTS A & B: Home Health Services	Intermittent skilled nursing care and other services in the home (daily skilled nursing care for up to 21 days or longer in some cases) - 100% of covered services and 80% of durable medical equipment under both Parts A & B	Same as '88	Intermittent skilled nursing care for up to 7 days a week for up to 38 days allowing for continuation of services under unusual circumstances; other services, - 100% of covered services and 80% of durable medical equipment under both Parts A & B	Same as '90
PART B Medical Expense: Services of a Physician/Outpatient Services	80% of reasonable charges after an annual \$75 deductible	80% after annual \$75 deductible	80% of reasonable charges after \$75 annual deductible until out-of-pocket maximum is reached. 100% of reasonable charges are covered for remainder of calendar year	Same as '90
Medical Supplies Other than Prescribed Drugs				
Blood	80% of costs except nonreplacement fees (blood deductible) for 1st 3 pints in each benefit period after \$75 deductible	Pays 80% of all costs except payment of deductible (equal to costs for first 3 pints) each calendar year	Same as '89	Same as '89
Mammography Screening			80% of approved charge for elderly and disabled Medicare beneficiaries exams available every other year for women 65 & over	Same as '90
Out-of-pocket Maximum			\$1,370 consisting of Part B \$75 deductible, Part B blood deductible and 20% coinsurance	\$1,370--will be adjusted annually by Secretary of Health & Human Services

Outpatient
Prescription Drugs

There is a \$550 total deductible applicable to home IV drug and immunosuppressive drug therapies as noted below

Covered after \$600 deductible subject to 50% coinsurance

Home IV-Drug Therapy

80% of IV therapy drugs subject to \$550 deductible (deductible waived if home therapy is a continuation of therapy initiated in a hospital)

80% of IV therapy drugs subject to standard drug deductible (deductible waived if home therapy is a continuation of therapy drugs initiated in a hospital)

Immunosuppressive
Drug Therapy

80% of costs during Same as '88 1st year following a covered organ transplant (no special drug deductible; only the regular Part B deductible)

Same as '88 for 1st year following covered transplant; 50% of costs during 2nd and following years (subject to \$550 deductible)

Same as '90 (subject to \$600 deductible)

Respite Care Benefit

In-home care for chronically dependent individual covered for up to 80 hours after either the out-of-pocket limit or the outpatient drug deductible has been met

Same as '90

6. A statement that the policy does not cover the following:
 - a. Private duty nursing;
 - b. Skilled nursing home care costs (beyond what is covered by Medicare);
 - c. Custodial nursing home care costs;
 - d. Intermediate nursing home care costs;
 - e. Home health care above the number of visits covered by Medicare;
 - f. Physician charges (above Medicare's reasonable charges);
 - g. Drugs (other than prescription drugs furnished during a hospital or skilled nursing facility stay);
 - h. Care received outside the United States; and
 - i. Dental care or dentures, checkups, routine immunizations, cosmetic surgery, routine foot care, and examinations for the cost of eyeglasses or hearing aids.
7. A description of any policy provisions which exclude, eliminate, resist, reduce, limit, delay, or in any manner operate to qualify payments of benefits described in paragraph 4 above, including conspicuous statements:
 - a. That the chart summarizing Medicare benefits only briefly describes such benefits; and
 - b. That the Health Care Financing Administration or its Medicare publications should be consulted for further details and limitations.
8. A description of policy provisions respecting renewability or continuation of coverage, including any reservation of rights to change premium.
9. The amount of premium for this policy.

(4) Notice regarding policies or subscriber contracts which are not Medicare supplement policies. Any accident or sickness insurance policy (other than a Medicare supplement policy), disability income policy, basic, catastrophic, or major medical expense policy, or single premium nonrenewable policy issued for delivery in Kentucky to persons eligible for Medicare by reason of age shall notify insureds under such policy that the policy is not a Medicare supplement policy. Such notice shall either be printed on or attached to the first page of the outline of coverage delivered to insureds under the policy, or if no outline of coverage is delivered, printed on or attached to the first page of the policy or certificate delivered to insureds. Such notice shall be in no less than twelve (12) point type and shall contain the following language:

"THIS (POLICY OR CERTIFICATE) IS NOT A MEDICARE SUPPLEMENT POLICY. If you are eligible for Medicare, review the Medicare supplement buyer's guide available from the insurance company."

Section 10. Requirements for Replacement. (1) Prohibited compensation for replacement with the same insurer, nonprofit hospital, medical-surgical, dental, and health service corporation, or health maintenance organization. No insurer, nonprofit hospital, medical-surgical, dental, or health service corporation, or health maintenance organization shall provide compensation to its agents or other producers which is greater than the renewal compensation which would have been paid on an existing policy if the existing policy is

replaced by another policy with the same company where the new policy benefits are substantially similar to the benefits under the old policy and the old policy was issued by the same company or group of companies.

(2) Comparison statement. When a Medicare supplement policy is to replace another Medicare supplement policy, there shall be presented to the applicant, no later than at the time of taking the application, a comparison statement which shall be in the form prescribed by the commissioner. Direct response insurers shall present the comparison statement to the applicant not later than at the time of delivery of the policy. Agents shall obtain the signature of the applicant on the comparison statement and shall sign the comparison statement and send the comparison statement to the insurer. A copy of the comparison statement shall be attached to the replacement policy.

(3) Application forms shall include a question designed to elicit information as to whether a Medicare supplement policy or certificate is intended to replace any other accident and sickness policy or certificate presently in force. A supplementary application or other form to be signed by the applicant containing such a question may be used.

(4) Upon determining that a sale will involve replacement, an insurer (other than a direct response insurer), or its agent, shall furnish the applicant, prior to issuance or delivery of the Medicare supplement policy or certificate, a notice regarding replacement of accident and sickness insurance. One (1) copy of such notice shall be provided to the applicant and an additional copy signed by the applicant shall be retained by the insurer. A direct response insurer shall deliver to the applicant at the time of the issuance of the policy the notice regarding replacement of accident and sickness coverage. In no event, however, will such a notice be required in the solicitation of "accident only" and "single premium nonrenewable" policies.

(5) The notice required by subsection (4) of this section for an insurer (other than a direct response insurer) shall be provided in substantially the following form:

NOTICE TO APPLICANT REGARDING REPLACEMENT
OF ACCIDENT AND SICKNESS INSURANCE

According to (your application or information you have furnished), you intend to lapse or otherwise terminate existing accident and sickness insurance and replace it with a policy to be issued by (insurer name). Your new policy provides thirty (30) days within which you may decide without cost whether you desire to keep the policy. For your own information and protection, you should be aware of and seriously consider certain factors which may affect the insurance protection available to you under the new policy.

(a) Health conditions which you may presently have (so-called preexisting conditions) may not be immediately or fully covered under the new policy. This could result in denial or delay of a claim for benefits under the new policy, whereas a similar claim might have been payable under your present policy (this paragraph may be modified if preexisting conditions are, in fact, covered under the new policy).

(b) You may wish to secure the advice of your

present insurer or its agent regarding the proposed replacement of your present policy. This is not only your right, but it is also in your best interest to make sure you understand all the relevant factors involved in replacing your present coverage.

(c) If, after due consideration, you still wish to terminate your present policy and replace it with new coverage, be certain to truthfully and completely answer all questions on the application concerning your medical and health history. Failure to include all material medical information on an application may provide a basis for the insurer to deny any future claims and to refund your premium as though your policy had never been in force. After the application has been completed and before you sign it, reread it carefully to be certain that all information has been recorded properly.

The above "Notice to Applicant" was delivered to me on:

_____ Date

_____ Applicant's Signature

(6) The notice required by subsection (4) of this section for a direct response insurer shall be as follows:

NOTICE TO APPLICANT REGARDING REPLACEMENT
OF ACCIDENT AND SICKNESS INSURANCE

According to (your application or information you have furnished) you intend to lapse or otherwise terminate existing accident and sickness insurance and replace it with the policy delivered with this notice issued by (insurer name). Your new policy provides thirty (30) days within which you may decide without cost whether you desire to keep the policy. For your own information and protection, you should be aware of and seriously consider certain factors which may affect the insurance protection available to you under the new policy.

(a) Health conditions which you may presently have (so-called preexisting conditions) may not be immediately or fully covered under the new policy. This could result in denial or delay of a claim for benefits under the new policy, whereas a similar claim might have been payable under your present policy.

(b) You may wish to secure the advice of your present insurer or its agent regarding the proposed replacement of your present policy. This is not only your right, but it is also in your best interest to make sure you understand all the relevant factors involved in replacing your present coverage.

(c) (To be included only if the application is attached to the policy). If, after due consideration, you still wish to terminate your present policy and replace it with new coverage, read the copy of the application attached to your new policy and be sure that all questions are answered fully and correctly. Omissions or misstatements in the application could cause an otherwise valid claim to be denied. Check the application and write to (insurer name and address) within ten (10) days if any information is not correct and complete, or if any past medical history has been left out of the

application.

Insurer Name

Section 11. Filing Requirements for Advertising of Medicare Supplement Policies. (1) Every insurer, nonprofit hospital, medical-surgical, dental, and health service corporation, or health maintenance organization providing Medicare supplement policies in Kentucky shall provide a copy of any Medicare supplement policy advertisement intended for use in Kentucky whether through written, radio, or television, to the commissioner prior to such use. Advertisements need not be approved prior to use, but an advertisement shall not be used if it has been disapproved by the commissioner and notice of such disapproval has been given to the insurer, nonprofit hospital, medical-surgical, dental, and health service corporation, or health maintenance organization.

(2) Insurers and agents shall not use the names and addresses of persons purchased as "leads" unless the solicitation material used to obtain the names and addresses of the "leads" are filed as advertisements as required by this section. Insurers and agents shall not use such "leads" if the solicitation materials have been disapproved by the commissioner.

Section 12. Policy Delivery. If a Medicare supplement policy is not delivered by mail, the agent or insurer shall obtain a signed and dated delivery receipt from the insured. If the delivery receipt is obtained by an agent, the agent shall forward the delivery receipt to the insurer.

Section 13. Duplicate Benefits. (1) No insurer, nonprofit hospital, medical-surgical, dental, and health service corporation, or health maintenance organization, or agent thereof, may sell a policy to an individual entitled to benefits under Medicare or under any other policy with knowledge that such policy substantially duplicates health benefits to which such individual is otherwise entitled other than as a recipient of medical assistance benefits under Medicaid. For purposes of this paragraph, benefits which are payable to on or behalf of an individual without regard to other health benefit coverage of such individual shall not be considered duplicative.

(2) Application forms shall include a question designed to elicit information as to whether the insurance to be issued duplicates other health insurance presently in force.

Section 14. Transition of Medicare Supplement Policy Benefits and Premiums Due to Changes in Medicare. (1) This section is to assure the orderly implementation and conversion of Medicare supplement policy benefits and premiums due to changes in Medicare, to provide for reasonable standardization of the coverage, terms, and benefits of Medicare supplement policies, to facilitate public understanding of Medicare supplement policies, to eliminate provisions contained in Medicare supplement policies which may be misleading or confusing in connection with the purchase of such policies, to eliminate Medicare supplement policy provisions which may duplicate Medicare benefits, to provide full disclosure of Medicare

supplement policy benefits and benefit changes, and to provide refunds of premiums associated with benefits duplicating Medicare benefits.

(2) This section shall take precedence over other requirements relating to Medicare supplement policies only to the extent necessary to assure that benefits are not duplicated, that applicants receive adequate notice and disclosure of changes in Medicare supplement policies, that appropriate premium adjustments are made in a timely manner, and that premiums are reasonable in relation to benefits. Except as otherwise provided, this section shall apply to:

(a) All Medicare supplement policies delivered, issued for delivery, or which are otherwise subject to the jurisdiction of Kentucky on or after the effective date of this regulation; and

(b) All certificates issued under group Medicare supplement policies described in paragraph (a) of this subsection.

(3) Benefit conversion requirements for existing Medicare supplement policies.

(a) Effective January 1, 1989, no Medicare supplement policy or certificate in force in this state shall contain benefits which duplicate benefits provided by Medicare.

(b) General requirements.

1. No later than thirty (30) days prior to the annual effective date of Medicare benefit changes mandated by the Medicare Catastrophic Coverage Act of 1988, every insurer, nonprofit hospital, medical-surgical, dental, and health service corporation, and health maintenance organization providing Medicare supplement policies in Kentucky shall notify its policyholders of modifications it has made to Medicare supplement policies. Such notice shall be in a format prescribed by the commissioner.

a. Such notice shall include a description of the revisions to Medicare and a description of each modification made to the coverage provided under the Medicare supplement policy.

b. The notice shall inform each policyholder as to when any premium adjustment due to changes in Medicare benefits will be made.

c. The notice of benefit modifications and any premium adjustments shall be in outline form and in clear and simple terms so as to facilitate comprehension. Such notice shall not contain or be accompanied by any solicitation.

2. No modifications to an existing Medicare supplement policy shall be made at the time of or in connection with the notice requirements of this regulation except to the extent necessary to eliminate duplication of Medicare benefits and any modifications necessary under the policy or contract to provide indexed benefit adjustment.

3. As soon as practical, but no later than forty-five (45) days after the effective date of the Medicare benefit changes, every insurer, nonprofit hospital, medical-surgical, dental, and health service corporation, or health maintenance organization providing Medicare supplement policies in Kentucky shall file with the commissioner, in accordance with the applicable filing procedures in this state:

a. Appropriate premium adjustments necessary to produce loss ratios as originally anticipated for the applicable policies or contracts. Such supporting documents as necessary to justify the adjustment shall accompany the filing.

b. Any appropriate riders, endorsements, or

policy forms need to accomplish Medicare supplement policy modifications necessary to eliminate duplications with Medicare. Any such riders, endorsements, or policy forms shall provide a clear description of the Medicare supplement policy benefits provided.

(4) Upon satisfying the filing and approval requirements of this state, every insurer, nonprofit hospital, medical-surgical, dental, and health service corporation, or health maintenance organization providing Medicare supplement policies in Kentucky shall provide each covered person with any rider, endorsement, or policy form necessary to eliminate any benefit duplications under the Medicare supplement policy with benefits provided by Medicare.

(5) No insurer, nonprofit hospital, medical-surgical, dental, and health service corporation, or health maintenance organization shall require any person covered under a Medicare supplement policy which was in force prior to January 1, 1989, to purchase additional coverages under such policy unless such additional coverage was provided for in the policy.

(6) Every insurer, nonprofit hospital, medical-surgical, dental, and health service corporation, or health maintenance organization providing Medicare supplement policies in this state shall make such premium adjustments as are necessary to produce an expected loss ratio under such policy or contract as will conform with the minimum loss ratio standards for Medicare supplement policies and which is expected to result in a loss ratio as great as that originally anticipated. No premium adjustment which would modify the loss ratio experience under the policy other than the adjustments described herein should be made with respect to a policy at any time other than upon its renewal date. Premium adjustments shall be in the form of refunds or premium credits and shall be made no later than upon renewal if a credit is given, or within sixty (60) days of the renewal date if a refund is provided to the policyholder or other person paying the premium.

(7) Requirements for new Medicare supplement policies and certificates.

(a) Effective January 1, 1989, no Medicare supplement policy shall be delivered or issued for delivery in Kentucky if it provides benefits which duplicate benefits provided by Medicare. No Medicare supplement policy or certificate shall provide less benefits than those required under KRS 304.14-500 to 304.14-550 and this regulation, except where duplication of Medicare benefits would result.

(b) General requirements.

1. Within ninety (90) days of the effective date of this regulation, every insurer, nonprofit hospital, medical-surgical, dental, and health service corporation, or health maintenance organization required to file Medicare supplement policies with the Commissioner shall file new Medicare supplement policies or contracts which eliminate any duplication of Medicare benefits.

2. The filing required under subparagraph 1 of this paragraph shall provide for loss ratios which are in compliance with all minimum standards.

3. Every applicant for a Medicare supplement policy shall be provided with an outline of coverage which simply and accurately describes

benefits provided by Medicare and policy benefits and limitations.

Section 15. Severability. If any provision of this regulation or the application of this regulation to any person or circumstance is for any reason held to be invalid, the remainder of the regulation and the application of such provision to other persons or circumstances shall not be affected thereby.

Section 16. Repeal of 806 KAR 17:060; Effective date. (1) 806 KAR 17:060, Minimum standards for Medicare supplement policies, is repealed effective January 1, 1989.

(2) This regulation shall become effective upon completion of its review pursuant to KRS Chapter 13A.

LEROY MORGAN, Commissioner

THEODORE T. COLLEY, Secretary

APPROVED BY AGENCY: November 23, 1988

FILED WITH LRC: November 23, 1988 at 11 a.m.

STATEMENT OF EMERGENCY

904 KAR 2:015E

This emergency administrative regulation revises the cost-of-living adjustments to state supplementation recipients by increasing the amounts as follows: a) Recipients in Personal Care Homes receive a \$22 increase per month. b) Recipients in Family Care Homes receive an \$18 increase per month. c) Recipients in Caretender situations receive the following increases: single individual - \$15; couple (one requiring care) - \$22; couple (both requiring care) - \$24. This emergency administrative regulation adds these cost-of-living increases to be effective January 1, 1989. This emergency administrative regulation shall be replaced by an ordinary administrative regulation.

WALLACE G. WILKINSON, Governor

HARRY J. COWHERD, Secretary

CABINET FOR HUMAN RESOURCES
Department for Social Insurance
Division of Management & Development

904 KAR 2:015E. Supplemental programs for the aged, blind and disabled.

RELATES TO: KRS 205.245

STATUTORY AUTHORITY: KRS 194.050

EFFECTIVE: December 13, 1988

NECESSITY AND FUNCTION: The Cabinet for Human Resources is responsible under Title XVI of the Social Security Act as amended by Public Law 92-603 to administer a state funded program of supplementation to all December, 1973, recipients of aid to the aged, blind and disabled, hereinafter referred to as AABD, disadvantaged by the implementation of the Supplemental Security Income Program, hereinafter referred to as SSI. KRS 205.245 provides not only for the mandatory supplementation program but also for supplementation to other needy aged, blind and disabled persons. This regulation sets forth the provisions of the supplementation program.

Section 1. Mandatory State Supplementation. Mandatory state supplementation payments must be

equal to the difference between the AABD payment for the month of December, 1973, plus any other income available to the recipient as of that month and the total of the SSI payment and other income. Also included are those former aged, blind or disabled recipients ineligible for SSI due to income but whose special needs entitled them to an AABD payment as of December, 1973. Mandatory payments must continue until such time as the needs of the recipient as recognized in December, 1973, have decreased or income has increased to the December level.

(1) The mandatory payment is increased only when income as recognized in December, 1973, decreases, the SSI payment is reduced but the recipient's circumstances are unchanged, or the standard of need utilized by the department in determining optional supplementation payments for a class of recipients is increased.

(2) In cases of man and wife, living together, income changes after September, 1974, will result in increased mandatory payment only if total income of the couple is less than December, 1973, total income.

Section 2. Optional State Supplementation. Optional state supplementation is available to those persons meeting technical requirements and resource limitations of the aged, blind or disabled medically needy program as contained in 907 KAR 1:011 and 907 KAR 1:004 (except as otherwise specified herein) who require special living arrangements and who have insufficient income to meet their need for care. Special living arrangements include residence in a personal care home as defined in 902 KAR 20:036 or family care home as defined in 902 KAR 20:041 or situations in which a caretaker must be hired to provide care other than room and board. A supplemental payment is not made to or on behalf of an otherwise eligible individual when the caretaker service is provided by the spouse, parent (of an adult disabled child or a minor child), or adult child (of an aged or disabled parent) who is living with the otherwise eligible individual. When this circumstance exists and a person living outside the home is hired to provide caretaker services, the supplemental payment may be made. Application for SSI, if potential eligibility exists, is mandatory.

Section 3. Resources Considerations. In determining countable resources and the effect of resources on eligibility, the following policies are applied.

(1) The upper limit for resources for an individual and for a couple is set at \$1,700 and \$2,550, respectively, effective January 1, 1986; at \$1,800 and \$2,700, respectively, effective January 1, 1987; at \$1,900 and \$2,850, respectively, effective January 1, 1988; and at \$2,000 and \$3,000, respectively, effective January 1, 1989.

(2) Income producing property with a net equity of \$6,000 or less is excluded.

(3) The first \$4,500 of equity value in an automobile is excluded; if used for employment, to obtain medical services, or if specially equipped (e.g., as for use by the handicapped) there is no upper limit on value.

(4) Burial reserves (life insurance, prepaid burial policy, etc.) up to \$1,500 are excluded. The face value of life insurance is considered when determining the total value of burial

reserves if the face value of the life insurance is less than \$1,500. Burial spaces are excluded from consideration when computing the value of burial reserves.

(5) A homestead, household items, and personal items are excluded.

(6) Resources determined in accordance with subsections (2), (3), and (4) of this section to be in excess of excluded amounts must be considered countable resources when determining whether the individual or couple exceeds the upper limits specified in subsection (1) of this section. If resources exceed the upper limits, the individual or couple is ineligible.

Section 4. Income Considerations. In determining the amount of optional supplementation payment, total net income of the applicant or recipient, or applicant or recipient and spouse, including any payments made to a third party in behalf of an applicant or recipient, is deducted from the standard of need with the following exceptions:

(1) Income of the ineligible spouse is conserved for the needs of the ineligible, non-SSI spouse and/or minor dependent children in the amount of one-half (1/2) of the SSI standard for an individual for each person adjusted by deduction of sixty-five (65) dollars and one-half (1/2) of the remainder from monthly earnings of spouse. Income of the eligible individual is not conserved for the needs of the ineligible spouse and/or minor dependent children. When conserving for the needs of the minor dependent children, income of the children must be appropriately considered so that the amount conserved does not exceed the allowable amount. When the eligible individual and spouse each have earnings, the earnings must be combined prior to the application of the earnings disregard of sixty-five (65) dollars and one-half (1/2) of the remainder.

(2) If one (1) member of a couple is institutionalized and the SSI spouse maintains a home, income in the amount of the SSI standard for one (1) is conserved for the spouse.

Section 5. Standard of Need. (1) The standard, based on living arrangement, from which income as computed in Section 4 of this regulation is deducted to determine the amount of optional payment is as follows:

(a) Personal care home: not less than \$568 [546], effective 1/1/89 [1/1/88];

(b) Family care home: not less than \$462 [444], effective 1/1/89 [1/1/88];

(c) Caretaker.

1. Single individual, or eligible individual with ineligible spouse (one who is not aged, blind, or disabled): not less than \$398 [383], effective 1/1/89 [1/1/88];

2. Married couple, both eligible (aged, blind, or disabled), with one (1) requiring care: not less than \$578 [556], effective 1/1/89 [1/1/88];

3. Married couple, both eligible and both requiring care: not less than \$618 [594], effective 1/1/89 [1/1/88].

(2) In couple cases, both eligible, the couple's income is combined prior to comparison with the standard of need, and one-half (1/2) of the deficit is payable to each.

Section 6. Institutional Status. No aged, blind or disabled person shall be eligible for state supplementation while residing in a

personal care home or family care home unless such home is licensed under KRS 216B.010 to 216B.131.

Section 7. Residency. (1) To be eligible, an applicant or recipient must be a citizen of the United States, or an alien legally admitted to this country or an alien who is residing in this country under color of law. An alien must have been admitted for permanent residence. The applicant or recipient must also be a resident of Kentucky. Generally, this means the individual must be residing in the state for other than a temporary purpose; however, there are exceptions with regard to applicants for or recipients of a state supplemental payment and institutionalized individuals. The residency criteria specified in federal regulations at 42 CFR 435.403 shall be applicable except as otherwise specified herein.

(2) Supplemental payments may be made to Kentucky residents residing outside the state only when the individual has been placed in the other state by this state. In these situations, the other requirements for eligibility shown in other sections of this regulation shall be applicable, except that with regard to the requirement shown in Section 6 of this regulation, the licensure shall be in accordance with a similar licensure act of the other state. If there is no similar licensure act in the other state, the payment may be made only if this state determines that, except for being in another state, the facility meets standards for licensure under the provisions of KRS 216B.010 to 216B.131. To be eligible for a supplemental payment while placed out-of-state the individual must require the level of care provided in the out-of-state placement, there must be no suitable placement available in Kentucky, and the placement must be preauthorized by staff of the Department for Social Insurance.

(3) When determining residency, ability of the individual to indicate intent (to become a Kentucky resident) must be considered if the individual is institutionalized. The individual is considered incapable of indicating intent if:

(a) His/her I.Q. is forty-nine (49) or less or he/she has a mental age of seven (7) or less, based on tests acceptable to the department; or

(b) He/she is judged legally incompetent; or

(c) Medical documentation, or other documentation acceptable to the state, supports a finding that he/she is incapable of indicating intent.

(4) An individual is institutionalized if he/she is residing in a facility providing some services other than room and board. Personal care facilities are considered to be institutions.

(5) For any noninstitutionalized individual under age twenty-one (21) whose eligibility for a supplemental payment is based on blindness or disability, his/her state of residence is Kentucky if he/she is actually residing in the state.

(6) For any noninstitutionalized individual age twenty-one (21) or over, his/her state of residence is Kentucky if he/she is residing in the state and has the intention to remain permanently or for an indefinite period (or, if incapable of indicating intent, is simply residing in the state).

(7) For any institutionalized individual living in Kentucky who is under age twenty-one

(21) or who is age twenty-one (21) or older and became incapable of indicating intent before age twenty-one (21), the state of residence is Kentucky if:

(a) The state of residence of the individual's parents, or his/her legal guardian if one has been appointed, is Kentucky; or

(b) The state of residence of the parent applying for the supplemental payment on behalf of the individual is Kentucky, when the other parent lives in another state and there is no appointed legal guardian.

(8) For any institutionalized individual living in Kentucky who became incapable of indicating intent at or after age twenty-one (21), the state of residence is Kentucky if he/she was living in Kentucky when he/she became incapable of indicating intent. If this cannot be determined, the state of residence is Kentucky unless he/she was living in another state when he/she was first determined to be incapable of indicating intent.

(9) For individuals subject to determinations of residency pursuant to subsections (7) and (8) of this section, the state of residency is Kentucky when the individual is residing in Kentucky, and a determination of residency applying those criteria does not show the individual to be a resident of another state.

(10) For an individual subject to a determination of residency pursuant to subsections (7) and (8) of this section, the state of residence is Kentucky when Kentucky and the state which would otherwise be the individual's state of residency have entered into an interstate residency agreement providing for reciprocal residency status; i.e., when a similarly situated individual in either state would by written agreement between the states be considered a resident of the state in which he is actually residing.

(11) For other institutionalized individuals (i.e., those individuals who are both age twenty-one (21) or over and capable of indicating intent), the state of residence is Kentucky if the individual is residing in Kentucky with the intention to remain permanently or for an indefinite period.

(12) Notwithstanding subsections (3) through (11) of this section, any individual placed by the cabinet in an institution in another state may, with appropriate preauthorization, be considered a resident of Kentucky, and any individual placed in an institution in Kentucky by another state shall not be considered a resident of Kentucky.

(13) An individual receiving a mandatory state supplemental payment from Kentucky shall be considered a resident of Kentucky so long as he/she continues to reside in Kentucky. An individual receiving a mandatory or optional supplemental payment from another state shall not be considered a resident of Kentucky.

(14) An individual eligible for and receiving a supplemental payment in October, 1979, shall be considered a Kentucky resident through July 4, 1984, even if he/she does not meet the residency requirements specified in this section, so long as such individual continues to reside in Kentucky and his/her receipt of supplementary payments has not since October, 1979 been interrupted by a period of ineligibility.

(15) Notwithstanding the preceding provisions of this section, a former Kentucky resident who

becomes incapable of indicating intent while residing out of this state shall be considered a Kentucky resident if he/she returns to this state and he/she has a guardian, parent or spouse residing in this state. Such individual shall not be considered a Kentucky resident on the basis of this subsection whenever, subsequent to that time, he/she leaves this state to reside in another state except when the provisions of subsection (11) of this section are met. An individual leaving the state may, however, reestablish Kentucky residency by returning to the state if he has a guardian, parent or spouse residing in this state.

MIKE ROBINSON, Commissioner

HARRY J. COWHERD, M.D., Secretary

APPROVED BY AGENCY: December 5, 1988

FILED WITH LRC: December 13, 1988 at 9 a.m.

STATEMENT OF EMERGENCY 907 KAR 1:010E

This emergency regulation increases the amounts that will be paid to physicians for inpatient delivery-related anesthesia services. This action must be taken on an emergency basis to ensure that Medicaid recipients will have access to necessary services in all areas of the state in a timely manner. This emergency administrative regulation differs from the emergency administrative regulation on the same subject that was filed October 7, 1988 as follows: Effective for services on or after December 1, 1988, a physician will be reimbursed the lesser of the actual billed charge or a standard fixed fee by type of procedure for inpatient physician delivery-related anesthesia services. This emergency administrative regulation also contains the provisions filed in the October 7, 1988 emergency administrative regulation. This emergency administrative regulation shall be replaced by an ordinary regulation to be filed on or about December 1, 1988.

WALLACE G. WILKINSON, Governor
HARRY J. COWHERD, M.D., Secretary

CABINET FOR HUMAN RESOURCES Department for Medicaid Services

907 KAR 1:010E. Payment for physicians' services.

RELATES TO: KRS 205.550, 205.560

STATUTORY AUTHORITY: KRS 194.050

EFFECTIVE: December 6, 1988

NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer a program of Medical Assistance under Title XIX of the Social Security Act. KRS 205.550 and 205.560 require that the secretary prescribe the methods for determining costs for vendor payments for medical care services. This regulation sets forth the method for establishing payment for physician services.

[Section 1. Amount of Payment. Payment for covered services rendered to eligible medical assistance recipients is based on the physicians' usual, customary, reasonable and prevailing charges.]

Section 1. [2.] Definitions. For purposes of determination of payment:

(1) Usual and customary charge refers to the uniform amount the individual physician charges in the majority of cases for a specific medical procedure or service.

(2) Prevailing charge refers to those charges which fall within the range of charges as computed by the use of a predetermined and established statistical percentile. Prevailing charges for each medical procedure are derived from the overall pattern existing within the state.

Section 2. Amount of Payment. Payment for covered services rendered to eligible medical assistance recipients is based on the physicians' usual, customary, reasonable and prevailing charges.

Section 3. Method and Source of Information on Charges. (1) Effective October 1, 1981, the individual fee profiles for participating physicians were generated from historical data accumulated from charges submitted and processed by the medical assistance program during all of calendar year 1980.

(2) Effective October 1, 1981, the Title XIX prevailing fee maximums were generated from the same historical data as referenced in subsection (1) of this section.

(3) Effective October 1, 1981, the Title XVIII, Part B, current reasonable charge profiles were utilized by the medical assistance program.

(4) Effective October 1, 1981, the Title XVIII, Part B, current prevailing charge data was utilized by the medical assistance program.

(5) Percentile.

(a) The Title XIX prevailing charges were established by utilizing the statistical computation of the 75th percentile.

(b) The Title XVIII, Part B, prevailing charges were established by utilizing the statistical computation of the 75th percentile.

Section 4. Maximum Reimbursement for Covered Procedures. (1) Reimbursement for covered procedures is limited to the lowest of the following:

(a) Actual charge for service rendered as submitted on billing statement;

(b) The physician's median charge for a given service derived from claims processed or from claims for services rendered during all of the calendar year preceding the start of the fiscal year in which the determination is made.

(2) In no case may payment exceed the prevailing charge established under Part B, Title XVIII for similar service on a statewide basis.

(3) In instances where a prevailing charge has not been established for a specific medical procedure by Part B, Title XVIII, the prevailing charge established under Title XIX is utilized as the maximum allowable fee.

(4) The upper limit for new physicians shall not exceed the 50th percentile.

(5) The amount otherwise payable for outpatient services, as determined in accordance with Sections 1 through 3 of this regulation and subsections (1) through (4) of this section, shall be reduced by five (5) percent to arrive at the final payment amount.

(6) Effective with regard to services provided

on or after October 1, 1988, physicians will be allowed to secure drugs for specified immunizations identified in 907 KAR 1:009 free from the Department for Health Services to provide immunizations for Medicaid recipients, with reimbursement for the cost of the drugs made from the Department for Medicaid Services to the Department for Health Services upon receipt of notice from the physicians that the drugs were used to provide immunizations to Medicaid recipients.

(7) Effective with regard to services provided on or after October 1, 1988, physicians will be allowed to purchase drugs for specified immunizations identified in 907 KAR 1:009 in the open market to provide immunizations for Medicaid recipients and the Department for Medicaid Services will reimburse the physician the same amounts that would have been paid to the Department for Health Services if the drugs had been obtained through that agency upon receipt of appropriate notice that the drugs were used to provide immunizations to Medicaid recipients.

Section 5. Exceptions. Exceptions to reimbursement as outlined in the above [foregoing] sections are as follows:

(1) Reimbursement for physician's services provided to inpatients of hospitals is made on the basis of 100 percent reimbursement per procedure for the first twenty (20) dollars of allowable reimbursement and on the basis of a percentage of the physician's usual, customary and reasonable charge in excess of twenty (20) dollars per procedure, after the appropriate prevailing fee screens are applied. The percentage rate applied to otherwise allowable reimbursement in excess of twenty (20) dollars per procedure is established at thirty-five (35) percent. The percentage rate will be reviewed periodically and adjusted according to the availability of funds.

(2) Payments for specified obstetrical services provided on or after November 1, 1987, shall be at the lower of the actual billed charge or the following flat rates: for board certified obstetricians, normal delivery and cesarean section, \$650; for all other physicians, normal delivery, and cesarean section, \$550.

(3) For inpatient delivery-related anesthesia services provided on or after December 1, 1988, a physician will be reimbursed the lesser of the actual billed charge or a standard fixed fee paid by type of procedure. Those procedures and standard fixed fees are:

Normal delivery	\$200
Low cervical c-section	270
Classic c-section	320
Epidural single	315
Epidural continuous	335
Extraperitoneal c-section	320
C-section with hysterectomy, subtotal	320
C-section with hysterectomy, total	320

(4) [(3)] Payment for individuals eligible for coverage under Title XVIII, Part B, Supplementary Medical Insurance, is made in accordance with Sections 1 through 4 of this regulation and subsections (1) and (2) of this section within the individual's deductible and coinsurance liability.

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: November 28, 1988
FILED WITH LRC: December 6, 1988 at 3 p.m.

STATEMENT OF EMERGENCY 907 KAR 1:210E

This emergency administrative regulation provides that effective for services provided on or after December 1, 1988, nurse anesthetists will be reimbursed for inpatient delivery-related anesthesia services at a standard fixed fee by type of procedure or the actual billed charge, whichever is less. This action must be taken on an emergency basis to ensure that Medicaid recipients will have access to necessary services in all areas of the state in a timely manner. This emergency administrative regulation shall be replaced by an ordinary regulation to be filed on or about December 1, 1988.

WALLACE G. WILKINSON, Governor
HARRY J. COWHERD, M.D., Secretary

CABINET FOR HUMAN RESOURCES Department for Medicaid Services

907 KAR 1:210E. Payments for nurse anesthetists' services.

RELATES TO: KRS 205.520

STATUTORY AUTHORITY: KRS 194.050

EFFECTIVE: December 6, 1988

NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the program of Medical Assistance in accordance with Title XIX of the Social Security Act. KRS 205.520 empowers the cabinet, by regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This regulation sets forth the method for determining amounts payable by the cabinet for nurse anesthetists' services.

Section 1. Payments. Participating nurse anesthetists shall be paid at the rate of seventy-five (75) percent of the anesthesiologist's allowable charge for the same procedure under the same conditions, or at actual billed charges if less.

Section 2. Exceptions. For inpatient delivery-related anesthesia services provided on or after December 1, 1988, a nurse-anesthetist will be reimbursed the lesser of the actual billed charge or the standard fixed fee paid by type of procedure. Those procedures and fixed fees are:

Normal delivery	\$150.00
Low cervical c-section	202.50
Classic c-section	240.00
Epidural single	236.00
Epidural continuous	251.25
C-section with hysterectomy, subtotal	240.00
C-section with hysterectomy, total	240.00
Extraperitoneal c-section	240.00

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: November 28, 1988
FILED WITH LRC: December 6, 1988 at 3 p.m.

REGULATIONS AS AMENDED BY ADMINISTRATIVE BODY AND REVIEWING COMMITTEE

COMPILER'S NOTE: The following regulations were amended by the promulgating agency and the Administrative Regulation Review Subcommittee on December 5, 1988.

REVENUE CABINET

Department of Professional & Support Services
(As Amended)

103 KAR 5:140. Property valuation administrator qualification examination.

RELATES TO: KRS 118.165, 132.370, 132.375, 132.380

STATUTORY AUTHORITY: KRS Chapter 13A

NECESSITY AND FUNCTION: This regulation provides that the qualifying examination for candidates seeking the office of property valuation administrator (hereinafter referred to as the "PVA exam") be conducted in a uniform manner resulting in a fair evaluation of candidates seeking this office.

Section 1. Applicability of Regulation. This regulation applies to PVA exams conducted after January 1, 1989 for both interim vacancies and the general quadrennial PVA exam.

Section 2. Content of the PVA Exam. (1) The PVA exam shall contain 100 questions. The written portion of the PVA exam shall contain a problem solving skills section and a verbal skills section. The weight of the oral portion of the examination required by KRS 132.380(1) shall not exceed five (5) percent of the overall weight of the examination.

(2) The verbal skills section shall contain terminology encountered in the modern assessor's environment, but shall not test candidates on their knowledge of specialized terms or acronyms used only in the administration of the office of property valuation administrator.

(3) The problem solving skills section shall contain problems based on situations to be encountered in the modern assessor's environment, but shall not contain problems requiring knowledge of special formulas or specific skills known only to those with experience in the office of property valuation administrator.

(4) The oral portion of the examination shall be based on a question and answer format. The questions shall have a factual basis and may be based on reading material supplied to examinees, who may consult such reading material during the examination. No question shall be posed which could be construed as discriminatory, nor shall any question assume prior knowledge of the office of property valuation administrator on the part of the examinee.

(5) The solutions to problems or questions on the examination shall be presented in a multiple-choice format. "True-false" solutions shall not be utilized. "None-of-the-above" or "all-of-the-above" solutions shall not be utilized. Trick questions or problems shall not be utilized.

Section 3. Administration of PVA Exam. (1) The procedures utilized during the administration of

the PVA exam shall be uniform among all testing centers.

(2) The PVA exam shall be administered only by personnel from the Department of Property Taxation of the Kentucky Revenue Cabinet.

(3) Since KRS 132.380(1) requires that the general quadrennial PVA exam be given during February of each year in which property valuation administrators are to be elected, and KRS 118.165 requires that candidates file during January of the same year, no one shall be allowed to take the general quadrennial PVA exam who has not filed to run for the office of property valuation administrator.

(4) Special PVA exams administered under KRS 132.380(3) shall be open to all residents of the county in which the vacancy has occurred.

(5) Every examination booklet issued to candidates shall be uniquely identified according to an inclusive numbering system. The examination booklet number shall be recorded on separate answer sheets and registration forms.

(6) Positive identification shall be required of all test takers. Photographs of test takers may be required, and fingerprints of test takers shall be required.

(7) Calculators, electronic or otherwise, shall not be used during the PVA exam and are not allowed inside testing centers.

(8) No one shall be admitted to testing centers after the PVA exam has begun.

(9) A time limit of three and one-half (3 1/2) hours shall be allowed for completion of the written portion of the PVA exam.

(10) Oral examinations shall be administered by at least two (2) Department of Property Taxation employees. Candidates shall be given oral examinations in order of completion of the written portion of the PVA exam.

(11) The Department of Property Taxation shall have the authority to design and implement any reasonable rules which would enhance the security and the credibility of the PVA exam.

Section 4. Grading of the PVA Exam. (1) The PVA exam shall be graded in strict confidence by the Department of Property Taxation.

(2) A grade of seventy (70) percent or higher constitutes successful completion of the PVA exam.

(3) An individual's grade shall not be revealed to any other person. Grades shall not be revealed in any event over the telephone or without a specific written authorization from the individual test taker.

(4) A list of all applicants within each county achieving a passing score on the PVA exam shall be provided to the respective county clerks and county judge executives by the Revenue Cabinet in cases of vacancies under KRS 132.375.

(5) The results of the general quadrennial PVA exam for each county shall be provided to the respective county clerks by the Revenue Cabinet within fifteen (15) days of the test. The county clerk shall not allow any person's name to appear on a ballot who has not passed the PVA exam.

C. EMMETT CALVERT, Secretary
APPROVED BY AGENCY: October 13, 1988
FILED WITH LRC: October 14, 1988 at 9 a.m.

REVENUE CABINET
Department of Professional & Support Services
(As Amended)

103 KAR 43:300. Dealer licensing.

RELATES TO: KRS 138.210, 138.224, 138.226, 138.310, 138.990

STATUTORY AUTHORITY: KRS Chapter 13A

NECESSITY AND FUNCTION: This regulation provides rules and procedures for obtaining gasoline or special fuels dealers license, clarifies the types of activities a person must conduct to qualify for a license, explains operations requirements necessary to retain such license, and describes the consequences for violation of applicable laws and regulations.

Section 1. Except as otherwise specifically provided by law or regulation, no person shall receive, use, sell, transport, store or distribute any gasoline or special fuel in this state upon which the tax imposed by KRS 138.220 has not been paid nor shall any person refine, produce, distill, manufacture, blend or compound gasoline or special fuel in the state unless he is the holder of an uncanceled license issued by the Revenue Cabinet to engage in such business.

Section 2. No person shall be licensed as a gasoline dealer or a special fuels dealer unless such person is:

(1) Regularly engaged in the business of refining, producing, distilling, manufacturing, blending or compounding gasoline or special fuels in this state;

(2) Regularly importing nontaxpaid gasoline or special fuel into this state for distribution in bulk to others;

(3) Distributing gasoline from bulk storage in this state;

(4) Regularly engaged in the business of distributing special fuels in bulk primarily to others in arms length transactions; or

(5) In the case of gasoline, if approved by the Revenue Cabinet, receiving or accepting delivery of gasoline in amounts of not less than 100,000 gallons per month during any prior consecutive twelve (12) month period.

Section 3. Use of nontaxpaid special fuel by a person for nonhighway purposes shall not prohibit issuance of a special fuels dealer's license to such person provided he otherwise meets the requirements for a license as provided in Section 2 of this regulation.

[Section 4. Any person who acts in the capacity of a gasoline dealer or a special fuels dealer in this state as provided in Section 2 of this regulation, without holding an uncanceled license to engage in such business, shall pay the tax on all received gasoline or special fuels upon which the tax imposed by KRS 138.220 has not been reported and paid to the Revenue Cabinet and, in addition, shall pay a penalty equal to twenty (20) percent of the amount of the tax on such gasoline or special fuel and shall be fined not less than \$100 nor more than

\$1,000, or imprisoned in the county jail for not less than thirty (30) days nor more than one (1) year, or both. Each day or part of a day of doing business as a dealer without an uncanceled license shall be a separate offense.]

[Section 5. To procure the license required under Section 1 of this regulation, every dealer shall file with the Revenue Cabinet an application in such form and containing such information as the cabinet may deem necessary. At the time of filing application for a license, a bond issued by a corporation authorized to do surety business in Kentucky shall be filed with the cabinet in an amount not to exceed three (3) months' estimated tax liability as computed by the cabinet or \$5,000 whichever is greater.]

[Section 6. No license shall be issued upon any application unless accompanied by a bond as provided in Section 5 of this regulation. Further, if application for a dealer license is filed by any person who has previously acted in the capacity of a dealer without securing a dealer's license or, if licensed, whose license has at any time previously been cancelled for cause by the cabinet, or if the cabinet is of the opinion that the application is not filed in good faith, or that the application is filed by some person as a subterfuge for the real person in interest, the cabinet may, after notice and hearing, refuse to issue a dealer's license to that person.]

Section 4. [7.] A gasoline or special fuels dealer's license may, after notice and hearing, be revoked by the Revenue Cabinet for failure by the licensee to comply with all the provisions of KRS 138.210 to 138.500, including any regulation promulgated thereunder, applicable to such dealer.

C. EMMETT CALVERT, Secretary
APPROVED BY AGENCY: October 13, 1988
FILED WITH LRC: October 14, 1988 at 9 a.m.

GENERAL GOVERNMENT CABINET
State Board of Medical Licensure
(As Amended)

201 KAR 9:016. Restriction on use of amphetamines and amphetamine-like anorectic controlled substances.

RELATES TO: KRS 311.530 to 311.620

STATUTORY AUTHORITY: KRS 311.565

NECESSITY AND FUNCTION: KRS 311.597 empowers the State Board of Medical Licensure to determine those acts that shall constitute dishonorable, unethical or unprofessional conduct of a character likely to deceive, defraud or harm the public or any member thereof by a licensee. In accordance therewith, the purpose of this regulation is to regulate and control the use of amphetamine and amphetamine-like anorectic controlled substances.

Section 1. A physician shall not prescribe, order, dispense, administer, supply, sell or give any amphetamine or amphetamine-like anorectic controlled substance designated as Schedule II pursuant to KRS 218A.0780 or by duly promulgated regulation without taking into

account the drug's potential for abuse, the possibility the drug may lead to dependence, the possibility the patient will obtain the drug for a nontherapeutic use or distribute to others and the presence of an illicit market for the drug. The patient's record and the prescription order shall indicate the specific diagnosis/purpose for which the drug is being given. Such diagnosis/purpose shall be restricted to:

- (1) The treatment of narcolepsy;
- (2) The treatment of hyperkinesia;
- (3) The treatment of drug-induced brain dysfunction;
- (4) The treatment of epilepsy;
- (5) The differential diagnostic psychiatric evaluation of depression;
- (6) The treatment of depression shown to be refractory to other therapeutic modalities;
- (7) The treatment of attention deficit disorder; however, when methylphenidate [Ritalin] is prescribed for the treatment of attention deficit disorder in minor children, this regulation does not require the diagnosis/purpose to be noted on the prescription order; and
- (8) The clinical investigation of the effects of such drugs or compounds in which case an investigative protocol therefrom shall have been submitted to, reviewed and approved by the board before such investigation has begun.

Section 2. Amphetamine means all Schedule II controlled substances in this group, including but not limited to dextroamphetamine and methamphetamine. Amphetamine-like means all Schedule II controlled substances with pharmacologic activity similar to the prototype drugs of the amphetamine class, including but not limited to phenmetrazine and methylphenidate.

Section 3. Amphetamine and amphetamine-like controlled substances shall not be prescribed, ordered, dispensed, administered, supplied, sold or given except as provided in this regulation. A departure from this regulation shall constitute dishonorable, unethical or unprofessional conduct of a character likely to deceive, defraud or harm the public or a member thereof.

Section 4. For legitimate medical purposes, a physician may apply in writing for a written waiver of any of these requirements. The board may issue such waivers with terms and conditions it deems appropriate.

C. WILLIAM SCHMIDT, Executive Director
APPROVED BY AGENCY: October 13, 1988
FILED WITH LRC: October 14, 1988 at 9 a.m.

**CORRECTIONS CABINET
(As Amended)**

501 KAR 6:060. Northpoint Training Center.

RELATES TO: KRS Chapters 196, 197, 439
STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640
NECESSITY AND FUNCTION: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorize the secretary to adopt, amend or rescind regulations necessary and suitable for the proper administration of the cabinet or any division therein. These regulations are in conformity

with those provisions.

Section 1. Pursuant to the authority vested in the Corrections Cabinet the following policies and procedures are incorporated by reference on October 14 [September 13], 1988 and hereinafter should be referred to as Northpoint Training Center Policies and Procedures. Copies of the procedures may be obtained from the Office of the General Counsel, Corrections Cabinet, State Office Building, Frankfort, Kentucky 40601.

- NTC 01-03-01 Organization and Assignment of Responsibilities
- NTC 01-05-01 Extraordinary Occurrence Reports
- NTC 01-10-01 Legal Assistance for Staff
- NTC 01-11-01 Political Activities of Merit Employees
- NTC 01-15-01 Establishment of the Warden as Chief Executive Officer
- NTC 01-17-01 Relationships with Public, Media and Other Agencies
- NTC 02-02-02 Warden's Participation in the Agency Budgeting Process
- NTC 02-03-01 Fiscal Management: Audits
- NTC 02-04-01 Internal Control and Monitoring of Accounting Procedures
- NTC 02-07-02 Chapel Fund [(Added 9/13/88)]
- NTC 02-08-01 Inmate Canteen
- NTC 02-10-01 Insurance Coverage
- NTC 02-12-01 Inmate Personal Accounts
- NTC 03-01-01 Employee Dress and Personal Appearance
- NTC 03-02-01 Prohibited Employee Conduct
- NTC 03-03-01 Staff Members Suspected of Being Under the Influence of Intoxicants
- NTC 03-04-01 Shift/Post Assignments and Transfers
- NTC 03-06-01 Worker's Compensation
- NTC 03-08-01 Procedures for New Employees Reporting for Employment
- NTC 03-09-01 Maintenance, Confidentiality and Challenge of Information Contained in Employee Personnel File
- NTC 03-10-01 Employment of Ex-offenders
- NTC 03-11-01 Submission of Northpoint Training Center Staff Recommendation/Changes
- NTC 03-11-02 Employee Suggestion System
- [NTC 03-13-01 Travel Reimbursement for Official Business and Professional Meetings (Amended 10/14/88) (Deleted 12/5/88)]
- NTC 03-14-01 Procedures for Selection, Retention, Promotion, and Lateral Transfer of Merit System Employees
- NTC 03-14-02 Procedures for Promotional Opportunities
- NTC 03-15-01 Time and Attendance; Accumulation and Use of Accrued Time
- NTC 03-15-02 Procedures for Control of Excessive Leave Use
- NTC 03-15-03 Inclement Weather and Emergency Conditions
- NTC 03-16-01 Affirmative Action and EEO
- NTC 03-17-01 Employee Grievance Procedure
- NTC 03-18-01 Educational Assistance Program
- NTC 03-19-01 Holding of Second Jobs by Employees
- NTC 03-20-01 Assistance and Counseling Services for Employees and their Families
- NTC 03-21-01 Procedures for Employee Evaluation System
- NTC 04-01-01 Training and Staff Development
- NTC 04-04-01 Firearms and Chemical Agents Training

NTC 06-01-01	Offender Records	NTC 16-02-03	Honor Dorm Visiting
NTC 06-01-02	Records - Release of Information	NTC 16-03-01	Inmate Furloughs
NTC 06-01-03	Taking Offender Record Folders onto the Yard	NTC 16-05-01	Telephone Use and Control
NTC 08-05-01	The Fire and Safety Officer	NTC 17-01-01	Personal Property Control
NTC 08-05-02	Fire Procedures	NTC 17-01-02	Authorized Inmate Personal Property [(Amended 9/13/88)]
NTC 08-05-03	Fire Prevention	NTC 17-01-03	Unauthorized Inmate Property
NTC 08-05-04	Storage of Flammables and Dangerous Chemicals and Their Use	NTC 17-01-04	Disposition of Unauthorized Property
NTC 08-07-01	Safety Standards	NTC 17-03-01	Assessment/Orientation
NTC 10-01-01	Special Management Inmates (SMU)	NTC 18-01-01	Preparole Progress Report (Amended 10/14/88)
NTC 10-02-01	Security Guidelines for Special Management Inmates	NTC 18-02-01	Classification (Amended 10/14/88)
NTC 10-03-01	Protective Custody	NTC 18-02-02	Classification - 48 Hour Notification
NTC 11-03-01	Food Services: General Guidelines	NTC 18-03-01	Special Notice Form (Amended 10/14/88)
NTC 11-04-01	Food Service: Meals	NTC 18-05-01	Transfers of Inmates (Amended 10/14/88)
NTC 11-04-02	Menu, Nutrition and Special Diets [(Amended 9/13/88)]	NTC 18-05-02	Transfer of Inmates to Kentucky Correctional Psychiatric Center
NTC 11-05-02	Health Standards/Regulations for Food Service Employees	NTC 19-01-01	Inmate Work Program
NTC 11-06-01	Inspections and Sanitation	NTC 19-01-03	Temporary Leave from Job Assignment
NTC 11-07-01	Purchasing, Storage and Farm Products [(Amended 9/13/88)]	NTC 19-02-01	Correctional Industries
NTC 12-01-01	Institutional Inspections	NTC 19-02-02	Guidelines for Correctional Industries
NTC 12-02-01	Personal Hygiene for Inmates; Clothing and Linens	NTC 20-01-01	Academic School Program
NTC 12-02-02	Issuance of Personal Hygiene Products [(Amended 9/13/88)]	NTC 20-02-01	Vocational School
NTC 13-01-01	Emergency Medical Care Plan	NTC 20-02-02	Live Work Projects in Vocational School Classes [(Added 9/13/88)]
NTC 13-01-02	Emergency and Specialized Health Services	NTC 21-01-01	Library Services
NTC 13-02-01	Administration and Authority for Health Services	NTC 22-03-01	Conducting Inmate Organizational Meetings and Programs
NTC 13-03-01	Sick Call and Pill Call	NTC 23-01-01	Religious Services
NTC 13-04-01	Utilization of Pharmaceutical Products	NTC 23-03-01	Marriage of Inmates
NTC 13-05-01	Dental Services	NTC 24-04-01	Honor Status
NTC 13-06-01	Licensure and Training Standards	NTC 24-05-01	Unit Management
NTC 13-07-01	Provisions for Health Care Delivery	NTC 25-01-01	Release Preparation Program
NTC 13-08-01	Medical and Dental Records	NTC 25-01-02	Temporary Release/Community Center Release
NTC 13-09-01	Special Diets	NTC 25-01-03	Graduated Release
NTC 13-11-01	Inmate Health Screening and Evaluation	NTC 25-02-01	Funeral Trips and Bedside Visits
NTC 13-12-01	Special Health Care Programs [(Amended 9/13/88)]	NTC 25-03-01	Inmate Release Procedure
NTC 13-17-01	Inmates Assigned to Health Services	NTC 26-01-01	Citizen Involvement and Volunteer Services Program
NTC 13-19-01	Mental Health Care Program		
NTC 13-19-03	Suicide Prevention and Intervention Program		
NTC 13-20-01	Infectious Disease		
NTC 13-21-01	Vision Care/Optomety Services		
NTC 13-22-01	Informed Consent		
NTC 13-23-01	Special Needs Inmates		
NTC 14-01-01	Legal Services Program [(Amended 9/13/88)]		
NTC 14-01-02	Video Viewing of Trials [(Added 9/13/88)]		
NTC 14-02-01	Inmate Grievance Procedure		
NTC 14-03-01	Inmate Rights and Responsibilities		
NTC 14-03-02	Board of Claims		
NTC 14-04-01	Inmate Search Policy		
NTC 15-01-01	Restoration of Forfeited Good Time [(Amended 9/13/88)]		
NTC 15-02-01	Due Process/Disciplinary Procedures		
NTC 15-02-02	Extra Duty Assignments [(Amended 9/13/88)]		
NTC 15-02-03	Hearing Officer [(Amended 9/13/88)]		
NTC 15-03-01	Rules for Inmates Assigned to Outside Detail		
NTC 15-03-02	Rules and Regulations for General Population Dormitories		
NTC 15-04-01	Inmate Identification		
NTC 16-01-01	Mail Regulations		
NTC 16-02-01	Visiting [(Amended 9/13/88)]		
NTC 16-02-02	Extended and Special Visits		

JOHN T. WIGGINTON, Secretary
 APPROVED BY AGENCY: October 13, 1988
 FILED WITH LRC: October 13, 1988 at 4 p.m.

CABINET FOR HUMAN RESOURCES
 Department for Mental Health/Mental
 Retardation Services
 (As Amended)

902 KAR 12:020. Patient's rights.

RELATES TO: KRS Chapters 202A, 202B
 STATUTORY AUTHORITY: KRS 194.050, 202A.191,
 202A.196, 202B.060

NECESSITY AND FUNCTION: KRS Chapters 202A and 202B, relating to the hospitalization of mentally ill and mentally retarded persons, direct that the Secretary for the Cabinet for Human Resources shall adopt rules and regulations which insure proper administration and enforcement of these chapters. The function of this regulation is to describe the rights of mentally ill and mentally retarded patients and to establish rules for the use of seclusion, restraint, and treatment under emergency situations, in the treatment of such patients.

Section 1. Title. This regulation may be cited

as the "Kentucky Mental Patients' Bill of Rights."

Section 2. Right to be Adequately Informed.

(1) Each patient shall be adequately informed as to his individual treatment plan.

(a) A written individual treatment plan shall be prepared and entered into the medical record of each patient. Such treatment plan shall be subject to periodic review and shall be modified in the event of substantive changes;

(b) Each patient and his or her authorized representative shall have access to a written copy of his individual treatment plan;

(c) Upon written request, each patient and his or her authorized representative shall also be provided access to his entire medical record. In the event that full access to the medical record is refused, the patient shall be given a response in writing documenting the reasons for such refusal;

(d) In the case of minors or other persons who appear incapable of reading or understanding a written treatment plan, a summary of pertinent features of the treatment plan may be presented orally, and the responses of parents, guardians or other members of the immediate family shall be entered into the medical record if such persons can be located.

(2) For purposes of this regulation, the following definitions shall apply:

(a) "Individual treatment plan" means a written document which is a part of each patient's medical record and which must contain, but is not limited to:

1. A statement of the diagnosis of the patient;
2. The short and long-range objectives of care and treatment;
3. The methods of treatment to be employed;
4. The names of persons responsible for preparing and implementing the plan.

(b) "Substantive changes" means those changes which reflect distinct changes in goals of treatment, methods to be employed and the names of persons primarily responsible for overall review or implementation of the individual treatment plan:

1. Changes in the amount, frequency of administration, or specific type of medication shall not be considered substantive changes unless such changes involve introduction of new classes of medication including antipsychotic or anticonvulsant drugs;

2. Changes in the frequency, duration, place or supervision of daily activities shall not be considered substantive changes unless such changes exclude participation in the activities previously identified in the treatment plan or initiation of new activities which could not be reasonably anticipated on the basis of short and long-term treatment goals.

(c) "Emergency situation" means the presence of a situation in which a patient's behavior in his present environment is such that it presents an immediate and substantial danger or threat of immediate or substantial danger to that person or to others.

1. Behavior included in this definition extends to verbal threats or abuse toward other patients which creates a substantial risk that such other patients may react in a manner which poses an immediate substantial danger or threat of immediate substantial danger to themselves or others, or which will interfere in a substantial manner with the realistic opportunity of other

patients to improve their own level of functioning through care and treatments in a hospital or residential treatment center;

2. Substantial deviation from an individual treatment plan which is formulated with the mutual consent of the staff and the patient or which is approved pursuant to a court hearing, or the overt or repetitious violation of rules and procedures of the hospital or residential treatment center by the patient which presents an immediate and substantial danger or threat of immediate and substantial danger to that person or to others may also be considered as an emergency situation, provided the patient has previously been fully informed as to the content of his individual treatment plan and as to the rules and procedures which may be applicable to his behavior.

(d) "Restraint" means the application of any physical device, the application of physical body pressure by another person in such a way as to control or limit physical activity, or the intravenous, intramuscular, or subcutaneous administration of any pharmacologic or chemical agent to a mentally ill patient or mentally retarded resident with the sole or primary purpose of controlling or limiting the physical activities of the patient or resident.

(e) "Seclusion" means the confinement of a mentally ill or mentally retarded patient alone in a locked room.

(f) "Authorized representative" means the patient's attorney, guardian of a disabled adult, parent or guardian of a juvenile, or an individual authorized in writing by the patient to act in the patient's behalf.

Section 3. Right to Assist in Treatment Plan. Each patient shall have the right to assist in the planning of his treatment program.

(1) Each patient shall be informed of the contents of his individual treatment plan and his verbal, written or behavioral responses to this information shall be entered in the medical records. Whenever possible, the responses of a patient to his treatment plan shall be used to review and modify its contents including, but not limited to, the objectives and methods of treatment to be employed;

(2) In the cases of minors and other patients who appear incapable of reading or understanding their treatment plans, the responses of parents, guardians, or other members of the immediate family shall be entered into the medical records if such persons can be located.

Section 4. Right to Refuse Treatment. (1) Patients may, under certain conditions, refuse treatment offered to them by the hospital. Such refusal shall be clearly documented in the medical records.

(a) All patients, whether admitted voluntarily, or committed on an involuntary basis as the result of a hearing held pursuant to KRS Chapter 202A or 202B, have the right to refuse treatment. A patient who refuses treatment may be forcibly treated only pursuant to a court order after a de novo review as set forth in KRS 202A.196. [In the case of voluntary patients and patients who are minors admitted with the consent of their parents or guardian, treatment plans may be implemented or continued until such time as the patient or his parents or guardian request the discharge of the patient or [requests the] review of the

treatment plan.]

[(b) Involuntary patients, whether committed as the result of a hearing pursuant to KRS 202A.026 or 202B.040 or committed by a guardian pursuant to his powers under KRS 387.660(1), have the right to refuse treatment. A patient who refuses treatment may only be forcibly treated pursuant to a court order, after a de novo review, with a determination that such treatment is appropriate and in the best interests of the patient.] [In the case of mentally ill or mentally retarded patients involuntarily admitted without a court order, or pursuant to a hearing, treatment in accordance with the initial or revised treatment plan may be implemented or continued until such time as a formal application for further hospitalization is submitted and a hearing held on the matter. In the event that a hearing for further hospitalization is requested, the attorney for the respondent and the judge shall be informed prior to the time of the hearing of the current individual treatment plan and recent use of medication which might affect the ability of the respondent to communicate with his attorney or the judge;]

(b) [(c)] If no court findings exist to support the implementation of a specific treatment plan which is unacceptable to the patient, such treatment may be implemented or continued only in the event of an emergency situation documented in the medical records of the patient. The hospital or residential treatment center shall seek to develop an alternative plan of treatment acceptable to both the hospital or residential treatment center and the patient or secure a court order sanctioning forced treatment. If the hospital or residential treatment center and a voluntarily admitted patient cannot agree on an acceptable alternative plan of treatment, the hospital or residential treatment center may discharge the patient or pursue other remedies under law as may be necessary. In the event the hospital or residential treatment center prior to obtaining a judicial order for forced treatment determines that an emergency exists and that the patient presents an immediate and substantial danger or threat of immediate and substantial danger to self or others, the hospital or residential treatment center may intervene in the least intrusive manner possible while simultaneously seeking a de novo review.

(2) Refusal to participate in the treatment plan shall be clearly documented in the medical record and shall be honored unless an emergency situation exists or the activity has been reviewed and approved in a court hearing.

(3) In the absence of an emergency situation, the patient shall not be subjected to loss of any other privileges which he has at the time of his refusal unless such privileges are clearly documented in the individual treatment plan as being contingent upon his participation in that area where participation has been refused.

(4) If the emergency situation persists for a period of more than seventy-two (72) hours, the treatment team shall evaluate the treatment plan and make changes necessary to meet the needs of the patient. If the patient refuses the revised treatment program, emergency treatment may continue as long as the emergency continues to be documented in the patient's record and the treatment review committee shall be informed and [the committee] shall proceed according to law.

Section 5. Right to Personal Effects. (1) Each patient shall have the right to maintain, keep, and use personal effects, items or money except in the following instances:

(a) Retention of the item would be contrary to the patient's individual treatment plan;

(b) Retention of the item poses a threat of subjecting the patient or others to substantial physical harm;

(c) Retention of the item would subject it to a substantial risk of loss, theft or destruction by the patient or other persons;

(d) Retention of the item would substantially impair the opportunity of the patient or other patients to benefit from care and treatment in the hospital; or

(e) Retention of the item is contrary to rules and regulations of the hospital which are reasonably related to the health and safety of the patient or other patients, except that such rules and regulations shall be waived when possession of such item is a part of the patient's individual written treatment plan.

(2) After written notice to a discharged patient, hospitals and residential treatment centers may dispose of all unclaimed personal items 180 days after discharge. Any proceeds from the sale of such items shall be used for the benefit of persons residing at the hospital or residential treatment center.

Section 6. Right to Receive Visitors. (1) All patients shall have the right to meet with friends and relatives. This right shall not be waived except in the following instances:

(a) Exercise of the right would be inconsistent with the written provisions of the individual treatment plan, or

(b) An emergency situation exists.

(2) Each hospital or residential treatment center shall establish and post conspicuously rules governing visitors and visiting hours.

(3) All patients shall also have the right to refuse to meet with friends or relatives except that such right may be waived if such meetings are prescribed in the patient's individual treatment plan.

(4) Patients shall have the right to meet their authorized representative during nonvisitation hours, if suitable arrangements are made in advance with the hospital or residential treatment centers.

Section 7. Right to Receive Compensation for Work Done. Each patient shall have the right to receive payment for work performed on behalf of the hospital.

(1) All patients shall be provided compensation as designated by appropriate federal and state statutes and regulations for work performed at a hospital or residential treatment center where such work is of consequential economic benefit to the hospital or residential treatment center, any person, agency, or organization outside the hospital or the Commonwealth of Kentucky.

(2) The patient shall have the absolute right to refuse to perform any and all work except activities of immediate and direct benefit to the patient and his personal comfort.

Section 8. Right to De Novo Review [Refuse Intrusive Treatment. All patients shall have the right to refuse intrusive treatments]. Involuntarily committed patients [including

electroshock therapy or psychosurgery, subject to the following limitation. Any patients committed on an involuntary basis or who are minors, or who have been declared disabled pursuant to KRS Chapter 387,] may [only] be provided electroshock therapy or psychosurgery only pursuant to a court order after a de novo review as set forth in KRS 202A.196. [with a determination that such treatment is in the best interest of the patient as providing him the optimal opportunity to reasonably benefit from care and treatment in the hospital or residential treatment center.]

Section 9. Use of Seclusion and Restraint. The use of seclusion and other mechanical restraints in hospitals or residential treatment facilities shall be limited and shall be carried out only with appropriate precautions.

(1) Seclusion and other mechanical restraints used for the sole or principal purpose of controlling behavior which is the result of mental illness shall be instituted only when part of an individual treatment plan or in the event of an emergency situation.

(2) If use of seclusion or restraints is warranted under this section, the following rules shall apply:

(a) The medical records shall document the conditions which prevail at the time of the use of such treatments and shall include the order of a licensed physician prescribing or justifying such treatment;

(b) Mentally ill persons placed in seclusion or subjected to the use of mechanical restraints other than to prevent or treat self-inflicted

injury or to treat a concomitant medical or surgical disorder shall be individually observed and the need for continuing restraints or seclusion determined by a hospital or residential treatment facility employee at least every fifteen (15) minutes. In addition, the patient shall be seen daily by a physician and the reasons for continued use of this treatment procedure shall be documented in the medical records;

(c) The patients shall be permitted access to toilet facilities at least every two (2) hours and to bathing facilities every forty-eight (48) hours;

(3) No order by a licensed physician for seclusion or use of mechanical restraints shall be effective longer than twenty-four (24) hours after such treatment is implemented, and must be renewed if such treatment continues to be necessary, except where such treatment is prescribed to prevent or treat self-inflicted injury or a concomitant medical or surgical disorder; provided that any renewal order shall state the necessity for such continued treatment.

(4) In no circumstances shall restraints or seclusion be used principally or solely for the treatment of mental illness except as part of the documented individual treatment plan or in response to a documented emergency unless such treatment has received a review and approval by the court.

DENNIS D. BOYD, Commissioner

HARRY J. COWHERD, M.D., Secretary

APPROVED BY AGENCY: October 5, 1988

FILED WITH LRC: October 7, 1988 at 10 a.m.

(23) "Inspection" means an identification of the status of asbestos in schools, including identification of, assessment of the conditions of, or collection of preabatement air samples or bulk samples of, ACM. This term also includes reinspections, after the initial inspection has been performed.

(24) "Local education agency" or "LEA" means:

(a) Any local education agency as defined in section 198 of the Elementary and Secondary Education Act of 1965 (20 USC 3381), which means, a public board of education or other public authority legally constituted for either administrative control or direction of, or to perform a service function for, public elementary or secondary schools in a city, county, township, school district, or other political subdivision, or any combination of school districts or counties recognized as an administrative agency for its public elementary or secondary schools. This term also includes any other public institution or agency having administrative control and direction of a public elementary or secondary school.

(b) The owner of any nonpublic, nonprofit elementary or secondary school building.

(c) The governing authority of any school operated under the defense dependents' education system provided for under the Defense Dependents' Education Act of 1978 (20 USC 921, and the following related sections).

(25) "Management plan" means a plan submitted by an LEA and which is not disapproved, and which contains the items required in 40 CFR 763.93.

(26) "Management planner" means an individual who uses data gathered by inspectors to assess asbestos hazards, and by doing so determines appropriate response actions and develops management plans. A management planner may also perform the duties of an inspector.

(27) "Miscellaneous ACM" means miscellaneous material that is ACM in a school building.

(28) "Miscellaneous material" means interior building material on structural components, structural members, or fixtures, such as floor and ceiling tiles, and does not include surfacing material or thermal system insulation.

(29) "Nonfriable" means material in a school building which when dry may not be broken, crumbled, pulverized, or reduced to powder by hand pressure.

(30) "Operations and maintenance program" or "O&M program" means a program of work practices to maintain friable ACBM in good condition, ensure cleanup of asbestos fibers previously released, and prevent further release by minimizing and controlling friable ACBM disturbance or damage.

(31) "Person" has the meaning given it in KRS 224.005.

(32) "Removal" means the taking out or the stripping of substantially all ACBM from a damaged area, a functional space, or a homogeneous area in a school building.

(33) "Repair" means returning damaged ACBM to an undamaged condition or to an intact state so as to prevent fiber release.

(34) "Response action" means a method, including but not limited to removal, encapsulation, enclosure, repair, operations and maintenance, that protects human health and the environment from friable ACBM.

(35) "School" means any elementary or secondary school as defined in section 198 of

the Elementary and Secondary Education Act of 1965 (20 USC 2854).

(36) "School building" means:

(a) Any structure suitable for use as a classroom, including a school facility such as a laboratory, library, school eating facility, or facility used for the preparation of food;

(b) Any gymnasium or other facility which is specially designed for athletic or recreational activities for an academic course in physical education;

(c) Any other facility used for the instruction or housing of students or for the administration of education or research programs;

(d) Any maintenance, storage, or utility facility, including any hallway, essential to the operation of any facility described in paragraphs (a) to (c) of this subsection;

(e) Any portico or covered exterior hallway or walkway; or

(f) Any exterior portion of a mechanical system used to condition interior space.

(37) "Surfacing ACM" means surfacing material that is ACM.

(38) "Surfacing material" means material in a school building that is sprayed on, troweled on, or otherwise applied to surfaces, such as acoustical plaster on ceilings and fireproofing materials on structural members, or other materials on surfaces for acoustical, fireproofing, or other purposes.

(39) "Thermal system insulation" means material in a school building applied to pipes, fittings, boilers, breeching, tanks, ducts, or other interior structural components to prevent heat loss or gain, or water condensation, or for other purposes.

(40) "Thermal system insulation ACM" means thermal system insulation that is ACM.

Section 2. Applicability. The provisions of this regulation shall apply to all individuals required to be accredited by 401 KAR 63:050.

Section 3. Prohibition. No individual may engage in, nor any person cause or allow any individual to engage in, any asbestos abatement project at a school on or after October 12, 1988, unless an accreditation certificate to so engage in these projects has been issued to that individual by the cabinet, is currently in effect, and is maintained on the person of that individual at all times.

Section 4. Applications. (1) No individual shall be considered for accreditation unless the training requirements of Section 9 of this regulation have been completed prior to application.

(2) Applications for accreditation shall be made on forms prepared by the cabinet for this purpose and shall contain the information that the cabinet deems is necessary to determine whether the accreditation should be issued.

(3) Applications for accreditation shall be signed by the individual requesting accreditation. The signature shall be made under oath and shall constitute personal affirmation that the statements made in the application are true and complete.

(4) Applications shall contain the accreditation fee as indicated in Section 7 of this regulation.

Section 5. Consideration of Applications. (1)

REGULATIONS AMENDED AFTER PUBLIC HEARING

NATURAL RESOURCES AND
ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality
(Amended After Hearing)

401 KAR 63:045. School asbestos abatement accreditations.

RELATES TO: KRS 224.320, 224.330, 224.340, 224.550, 40 CFR 763.80, 763.84, 763.85, 763.86, 763.87, 763.88, 763.90, 763.91, 763.92, 763.93, 763.94, 763.95, 763.99, Appendices A, B, and D (October 30, 1987), Toxic Substances Control Act II (15 USC 2601 and the related sections which follow, as in effect on July 18, 1988)

STATUTORY AUTHORITY: KRS Chapter 13A, 224.033, 224.550, 224.560, 224.994

NECESSITY AND FUNCTION: KRS 224.033 requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement, and control of air pollution. KRS 224.550 allows the cabinet to develop, adopt, and maintain a comprehensive statewide asbestos contractor accreditation program relating to asbestos in schools. This regulation provides for the accreditation of individuals who inspect for asbestos in schools, prepare plans addressing potential and actual asbestos hazards in schools, and design, supervise, or perform response actions in schools.

Section 1. Definitions. As used in this regulation, the following terms shall have the following meanings. If not defined in this section, a term shall have the meaning given it by commonly accepted usage.

(1) "Abatement project designer" means an individual who determines how asbestos abatement work should be conducted and who prepares for purposes of an abatement response action, plans, designs, procedures, workscope, or other substantive direction or criteria.

(2) "Act" means the Toxic Substances Control Act (TSCA), 15 USC 2601 and the related sections which follow, as in effect on July 18, 1988.

(3) "Accredited" means when referring to an individual that the individual is accredited in accordance with section 206 of Title II of the Act.

(4) "Accreditation certificate" means a certificate issued by the cabinet attesting to the training qualifications of an individual to perform specified asbestos abatement projects.

(5) "Asbestos" means the asbestiform varieties of: chrysotile (serpentine), crocidolite (riebeckite), amosite (cummingtonite-grunerite), anthophyllite, tremolite, and actinolite.

(6) "Asbestos abatement contractor" means the individual responsible for the on-site supervision of the removal, encapsulation, or enclosure of friable ACM in a school. An asbestos abatement contractor may also perform the duties of an asbestos abatement supervisor, abatement project designer, or an asbestos abatement worker.

(7) "Asbestos abatement project" means any project intended to identify, assess, plan for, or respond to an asbestos hazard in a school building.

(8) "Asbestos abatement supervisor" means the individual responsible for the on-site

supervision of the removal, encapsulation, or enclosure of friable ACM in a school. An asbestos abatement supervisor may also perform the duties of an asbestos abatement contractor, abatement project designer, or an asbestos abatement worker.

(9) "Asbestos abatement worker" means an individual who cleans, removes, encapsulates, encloses, hauls, or disposes of friable asbestos material or who performs any response action required to be performed by an accredited individual.

(10) "Asbestos-containing material" or "ACM" means, when referring to school buildings, any material or product which contains more than one (1) percent asbestos by area.

(11) "Asbestos-containing building material" or "ACBM" means surfacing ACM, thermal system insulation ACM, or miscellaneous ACM that is found in or on interior structural members or other parts of a school building.

(12) "Cabinet" has the meaning given it in KRS 224.005.

(13) "Day" means calendar day.

(14) "Discipline" means any of the following: an inspector, management planner, abatement project designer, asbestos abatement contractor, asbestos abatement supervisor, and asbestos abatement worker.

(15) "Encapsulation" means the treatment of ACBM with a material that surrounds or embeds asbestos fibers in an adhesive matrix to prevent the release of fibers, as the encapsulant creates a membrane over the surface (bridging encapsulant) or penetrates the material and binds its components together (penetrating encapsulant).

(16) "Enclosure" means an airtight, impermeable, permanent barrier around ACBM to prevent the release of asbestos fibers into the air.

(17) "EPA" or "U.S. EPA" means the United States Environmental Protection Agency.

(18) "EPA-approved training course" means a training or refresher course for the discipline for which accreditation is requested which is approved by the U.S. EPA, at the time the course is taken, for the purpose of complying with the requirements of section 206 of the Act.

(19) "Friable" means that the material, when dry, may be broken, crumbled, pulverized, or reduced to powder by hand pressure, and includes previously nonfriable material after the previously nonfriable material becomes damaged to the extent that when dry it may be crumbled, pulverized, or reduced to powder by hand pressure.

(20) "Functional space" means a room, group of rooms, or homogeneous area (including crawl spaces or the space between a dropped ceiling and the floor or roof deck above), such as classrooms, a cafeteria, gymnasium, hallways, designated by an individual accredited to prepare management plans, or design or conduct response actions.

(21) "Homogeneous area" means an area of surfacing material, thermal system insulation material, or miscellaneous material that is uniform in color and texture.

(22) "Inspector" means an individual who identifies, assesses the condition of, or collects preabatement air samples or bulk samples of ACM.

Within fifteen (15) days after receipt of an application for accreditation, the cabinet shall advise the applicant as to whether or not the application is complete, and if not complete, what additional information is necessary in order to evaluate the application.

(2) Within fifteen (15) days after the application for accreditation is deemed complete, the cabinet shall make its determination concerning the application unless the cabinet determines that an additional period of time is necessary.

(3) If the application is approved, the cabinet shall issue to the applicant the accreditation certificate to engage in asbestos abatement projects at schools, according to the provisions of the regulation.

(4) The cabinet may deny an application for accreditation if the cabinet determines that the applicant has violated any provision of this regulation, 401 KAR 57:011, 401 KAR 63:042, or 401 KAR 63:050, if the applicant willfully made any misstatements in the application, or if the applicant cannot reasonably be expected to conduct himself in a manner that is consistent with the acceptance of responsibility for asbestos abatement projects at schools. The cabinet shall make determinations regarding issuance or denial of the accreditation based upon the applicant's actions during any prior term of accreditation, the information contained in the application, and any other pertinent information that is available to the cabinet.

(5) Accreditations issued according to this regulation shall be subject to the terms and conditions set forth and embodied in the accreditation certificate as the cabinet deems necessary to ensure compliance with the requirements of this regulation, 401 KAR 57:011, 401 KAR 63:042, and 401 KAR 63:050.

Section 6. Duration and Renewal of Accreditation Certificates. (1) Unless the cabinet revokes an accreditation certificate, both initial and renewed accreditation certificates issued after the effective date of this regulation, shall remain in effect concurrent with the certificate which is issued upon successful completion of the EPA-approved training or refresher course required in Section 9 of this regulation [for one (1) year after the date of issuance].

(2) No individual shall be considered for renewal of accreditation unless the training requirements of Section 9 of this regulation have been completed prior to application.

(3) Applications for renewal of accreditation shall be made on forms prepared by the cabinet for this purpose and shall contain the information that the cabinet deems is necessary to determine whether the accreditation should be issued.

(4) Applications for renewal of accreditation shall be signed by the individual requesting accreditation. The signatures shall be made under oath and shall constitute personal affirmation that the statements made in the application are true and complete.

(5) Failure to supply information required or deemed necessary by the cabinet to enable it to act upon the renewal application shall result in denial of that renewal.

(6) Any individual who submits an application for renewal of accreditation shall include with the application an accreditation fee, as

specified in Section 7 of this regulation.

(7) The cabinet shall make its determination to approve or deny the renewal within fifteen (15) days of receipt of a complete renewal application. The cabinet shall notify the applicant, in writing, of its determination and shall set forth its reasons for any denial.

(8) If the renewal is approved, the cabinet shall issue to the applicant the renewed certificate to engage in asbestos abatement projects in schools, according to the provisions of this regulation and 401 KAR 63:050.

(9) The cabinet may deny an application for renewal of accreditation if the cabinet determines that the applicant has violated any provision of this regulation, 401 KAR 57:011, 401 KAR 63:042, or 401 KAR 63:050, if the applicant willfully made any misstatements in the application, or if the applicant cannot reasonably be expected to conduct himself in a manner that is consistent with the acceptance of responsibility for asbestos abatement projects at schools. The cabinet shall make determinations regarding issuance or denial of the renewed accreditation based upon the applicant's actions during any prior term of accreditation, the information contained in the application, and any other pertinent information that is available to the cabinet.

(10) Renewed accreditations issued according to this regulation shall be subject to the terms and conditions set forth and embodied in the accreditation certificate as the cabinet deems necessary to ensure compliance with the requirements of this regulation, 401 KAR 57:011, 401 KAR 63:042, and 401 KAR 63:050.

Section 7. Fees. All fees shall be submitted to the cabinet by check or money order, payable to the Kentucky State Treasurer. Fees for more than one (1) discipline shall be obtained by summing the fees for the requested accreditations. The fee for accreditation as an inspector, management planner, abatement project designer, asbestos abatement contractor, asbestos abatement supervisor, or asbestos abatement worker shall be twenty (20) dollars. The fee for renewal of accreditation for each of those disciplines shall be ten (10) dollars.

Section 8. Accreditation Revocation. The cabinet may revoke any accreditation issued under this regulation if the accredited individual:

(1) Willfully makes any misstatement or knowingly omits information in the certification application, renewal application, or any amendments to an application;

(2) Fails to comply with the terms or conditions of the accreditation;

(3) Fails to comply with 401 KAR 57:011, 401 KAR 63:042, or 401 KAR 63:050;

(4) Fails to perform a response action in a manner which will protect human health and the environment;

(5) Performs a response action required to be performed by an accredited individual which is disapproved by the cabinet or not contained in an applicable management plan; or

(6) Alters any accreditation certificate.

Section 9. Training Requirements. (1) Initial accreditation. Every individual requesting accreditation shall attend and successfully complete an EPA-approved training course for the

appropriate discipline for which accreditation is requested within one (1) year prior to applying for accreditation. Training successfully completed at an EPA-approved training course for the requested discipline since January 1, 1985, shall satisfy the requirement of this subsection for one (1) year from October 5, 1988 [the effective date of this regulation].

(2) Renewal of accreditation.

(a) If an individual successfully completes an EPA-approved refresher course for the discipline for which accreditation is requested prior to the expiration of his certificate and if the individual requests that his accreditation certificate be renewed prior to expiration, then the cabinet may extend the accreditation certificate for one (1) year. The cabinet will issue a renewal certificate for each approved extension.

(b) If an individual fails to successfully complete an EPA-approved refresher course for the discipline for which accreditation is requested within one (1) year of being certified, his accreditation certificate shall expire; however, an expired certificate may be renewed if the applicant successfully completes an EPA-approved refresher course within one (1) year of expiration, and completes all other requirements for renewal of certifications.

(c) If an individual fails to successfully complete an EPA-approved refresher course for the discipline for which accreditation is requested within one (1) year of expiration of his accreditation certificate, the individual shall complete all requirements for initial accreditation in order to receive accreditation.

Section 10. Penalties. Any individual or other person who violates any provision of this regulation shall be subject to the appropriate enforcement action as provided under KRS 224.994.

CARL H. BRADLEY, Secretary
WILLIAM F. KNAPP, JR., Acting Commissioner
APPROVED BY AGENCY: December 14, 1988
FILED BY LRC: December 14 1988 at 4 p.m.

NATURAL RESOURCES AND
ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality
(Amended After Hearing)

401 KAR 63:050. Local education agencies.

RELATES TO: KRS 224.033(10), 224.320, 224.330, 224.340, 224.550, 40 CFR 763.80, 763.84, 763.85, 763.86, 763.87, 763.88, 763.90, 763.91, 763.92, 763.93, 763.94, 763.95, 763.99, Appendices A, B, and D (October 30, 1987), Toxic Substances Control Act II (15 USC 2601 and the related sections which follow, as in effect on July 18, 1988)

STATUTORY AUTHORITY: KRS Chapter 13A, 224.033, 224.550, 224.560, 224.994

NECESSITY AND FUNCTION: KRS 224.033 requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement, and control of air pollution. KRS 224.550 authorizes the cabinet to develop, adopt, and maintain a comprehensive statewide asbestos contractor accreditation program relating to asbestos in schools. This

regulation provides for the control of asbestos emissions in schools by requiring local education agencies to submit management plans to provide for the adequate identification and assessment of asbestos in schools and the removal or other appropriate treatment of friable asbestos-containing materials.

Section 1. Definitions. As used in this regulation and applicable portions of 40 CFR Part 763, the following terms shall have the following meanings. If not defined in this section, a term shall have the meaning given it by commonly accepted usage.

(1) "Act" means the Toxic Substances Control Act (TSCA), 15 USC 2601 and the related sections which follow, as in effect on July 18, 1988.

(2) "Accessible" means, when referring to ACM, that the material is subject to disturbance by school building occupants or custodial or maintenance personnel in the course of their normal activities.

(3) "Accredited" means when referring to an individual or a laboratory that the individual or laboratory is accredited in accordance with section 206 of Title II of the Act.

(4) "Accreditation certificate" means a certificate issued by the cabinet attesting to the qualifications of an individual to perform specified asbestos abatement projects.

(5) "Air erosion" means the passage of air over friable ACM which may result in the release of asbestos fibers.

(6) "Asbestos" means the asbestiform varieties of: chrysotile (serpentine), crocidolite (riebeckite), amosite (cummingtonite-grunerite), anthophyllite, tremolite, and actinolite.

(7) "Asbestos abatement project" means any project intended to identify, assess, plan for, or respond to an asbestos hazard in a school building.

(8) "Asbestos-containing material" or "ACM" means, when referring to school buildings, any material or product which contains more than one (1) percent asbestos by area.

(9) "Asbestos-containing building material" or "ACBM" means surfacing ACM, thermal system insulation ACM, or miscellaneous ACM that is found in or on interior structural members or other parts of a school building.

(10) "Asbestos debris" means:

(a) Pieces of ACBM that can be identified by color, texture, or composition; or

(b) Dust, if the dust is determined by an accredited inspector to be ACM.

(11) "Cabinet" has the meaning given it in KRS 224.005.

(12) "Damaged friable miscellaneous ACM" means friable miscellaneous ACM which has deteriorated or sustained physical injury so that the internal structure (cohesion) of the material is inadequate or, if applicable, which has delaminated so that its bond to the substrate (adhesion) is inadequate, or which for any other reason lacks fiber cohesion or adhesion qualities. Damage or deterioration may be illustrated by the separation of ACM into layers; separation of ACM from the substrate; flaking, blistering, or crumbling of the ACM surface; water damage; significant or repeated water stains, scrapes, gouges, mars, or other signs of physical injury on the ACM. Asbestos debris originating from the ACBM in question may also indicate damage.

(13) "Damage friable surfacing ACM" means

friable surfacing ACM which has deteriorated or sustained physical injury so that the internal structure (cohesion) of the material is inadequate, or which has delaminated so that its bond to the substrate (adhesion) is inadequate, or which for any other reason lacks fiber cohesion or adhesion qualities. Damage or deterioration may be illustrated by the separation of ACM into layers; separation of ACM from the substrate; flaking, blistering, or crumbling of the ACM surface; water damage; significant or repeated water stains, scrapes, gouges, mars, or other signs of physical injury on the ACM. Asbestos debris originating from the ACBM in question may also indicate damage.

(14) "Damaged or significantly damaged thermal system insulation ACM" means thermal system insulation ACM on pipes, boilers, tanks, ducts, and other thermal system insulation equipment where the insulation has lost its structural integrity, or its covering, in whole or in part, is crushed, water-stained, gouged, punctured, missing, or not intact so that it is not able to contain fibers. Damage may be further illustrated by occasional punctures, gouges, or other signs of physical injury to ACM; occasional water damage on the protective coverings or jackets; or exposed ACM ends or joints. Asbestos debris originating from the ACBM in question may also indicate damage.

(15) "Day" means calendar day.

(16) "Emergency response action" means a response action that was not planned but results from a sudden, unexpected event. This term includes operations necessitated by nonroutine failure of equipment.

(17) "Encapsulation" means the treatment of ACBM with a material that surrounds or embeds asbestos fibers in an adhesive matrix to prevent the release of fibers, as the encapsulant creates a membrane over the surface (bridging encapsulant) or penetrates the material and binds its components together (penetrating encapsulant).

(18) "Enclosure" means an airtight, impermeable, permanent barrier around ACBM to prevent the release of asbestos fibers into the air.

(19) "EPA" or "U.S. EPA" means the United States Environmental Protection Agency.

(20) "EPA-approved training course" means a training or refresher course that is approved by the U.S. EPA, at the time the course is taken as meeting the requirements of section 206 of the Act.

(21) "Fiber release episode" means any uncontrolled or unintentional disturbance of ACBM resulting in visible emission.

(22) "Friable" means that the material, when dry, may be broken, crumbled, pulverized, or reduced to powder by hand pressure, and includes previously nonfriable material after the previously nonfriable material becomes damaged to the extent that when dry it may be crumbled, pulverized, or reduced to powder by hand pressure.

(23) "Functional space" means a room, group of rooms, or homogeneous area (including crawl spaces or the space between a dropped ceiling and the floor or roof deck above), such as classrooms, a cafeteria, gymnasium, hallways, designated by an individual accredited to prepare management plans, or design or conduct response actions.

(24) "High-efficiency particulate air" or

"HEPA" means a filtering system capable of trapping and retaining at least 99.97 percent of all monodispersed particles three-tenths (0.3) μ m in diameter or larger.

(25) "Homogeneous area" means an area of surfacing material, thermal system insulation material, or miscellaneous material that is uniform in color and texture.

(26) "Inspector" means an individual who identifies, assesses the condition of, or collects preabatement air samples or bulk samples of ACM.

(27) "Inspection" means an identification of the status of asbestos in schools, including identification of, assessment of the conditions of, or collection of preabatement air samples or bulk samples of, ACM. This term also includes reinspections, after the initial inspection has been performed.

(28) "Local education agency" or "LEA" means:

(a) Any local education agency as defined in section 198 of the Elementary and Secondary Education Act of 1965 (20 USC 3381), which means, a public board of education or other public authority legally constituted for either administrative control or direction of, or to perform a service function for, public elementary or secondary schools in a city, county, township, school district, or other political subdivision, or any combination of school districts or counties recognized as an administrative agency for its public elementary or secondary schools. This term also includes any other public institution or agency having administrative control and direction of a public elementary or secondary school.

(b) The owner of any nonpublic, nonprofit elementary or secondary school building.

(c) The governing authority of any school operated under the defense dependents' education system provided for under the Defense Dependents' Education Act of 1978 (20 USC 921, and the related sections which follow).

(29) "Management plan" means a plan submitted by an LEA and which is not disapproved, which contains the items required in 40 CFR 763.93.

(30) "Management planner" means an individual who uses data gathered by inspectors to assess asbestos hazards, and by doing so determines appropriate response actions and develops management plans.

(31) "Miscellaneous ACM" means miscellaneous material that is ACM in a school building.

(32) "Miscellaneous material" means interior building material on structural components, structural members, or fixtures, such as floor and ceiling tiles, and does not include surfacing material or thermal system insulation.

(33) "Nonfriable" means material in a school building which when dry may not be crumbled, pulverized, or reduced to powder by hand pressure.

(34) "Operations and maintenance program" or "O&M program" means a program of work practices to maintain friable ACBM in good condition, ensure cleanup of asbestos fibers previously released, and prevent further release by minimizing and controlling friable ACBM disturbance or damage.

(35) "Person" has the meaning given it in KRS 224.005.

(36) "Potential damage" means circumstances in which:

(a) Friable ACBM is in an area regularly used by building occupants, including maintenance

personnel, in the course of their normal activities; or

(b) There are indications that there is a reasonable likelihood that the material or its covering will become damaged, deteriorated, or delaminated due to factors such as changes in building use, changes in operations and maintenance practices, changes in occupancy, or recurrent damage.

(37) "Potential significant damage" means circumstances in which:

(a) Friable ACBM is in an area regularly used by building occupants, including maintenance personnel, in the course of their normal activities;

(b) There are indications that there is a reasonable likelihood that the material or its covering will become significantly damaged, deteriorated, or delaminated due to factors such as changes in building use, changes in operations and maintenance practices, changes in occupancy, or recurrent damage; or

(c) The material is subject to major or continuing disturbance, due to factors including, but not limited to, accessibility or, under certain circumstances, vibration or air erosion.

(38) "Preventive measures" means actions taken to reduce disturbance of ACBM or otherwise eliminate the reasonable likelihood of the material's becoming damaged or significantly damaged.

(39) "Removal" means the taking out or the stripping of substantially all ACBM from a damaged area, a functional space, or a homogeneous area in a school building.

(40) "Repair" means returning damaged ACBM to an undamaged condition or to an intact state so as to prevent fiber release.

(41) "Response action" means a method, including but not limited to removal, encapsulation, enclosure, repair, operations and maintenance, that protects human health and the environment from friable ACBM.

(42) "Routine maintenance area" means an area, such as a boiler room or mechanical room, that is not normally frequented by students and in which maintenance employees or contract workers regularly conduct maintenance activities.

(43) "School" means any elementary or secondary school as defined in section 198 of the Elementary and Secondary Education Act of 1965 (20 USC 2854).

(44) "School building" means:

(a) Any structure suitable for use as a classroom, including a school facility such as a laboratory, library, school eating facility, or facility used for the preparation of food;

(b) Any gymnasium or other facility which is specially designed for athletic or recreational activities for an academic course in physical education;

(c) Any other facility used for the instruction or housing of students or for the administration of education or research programs;

(d) Any maintenance, storage, or utility facility, including any hallway, essential to the operation of any facility described in paragraphs (a) to (c) of this subsection;

(e) Any portico or covered exterior hallway or walkway; or

(f) Any exterior portion of a mechanical system used to condition interior space.

(45) "Significantly damaged friable miscellaneous ACM" means damaged friable

miscellaneous ACM where the damage is extensive and severe.

(46) "Significantly damaged friable surfacing ACM" means damaged friable surfacing ACM in a functional space where the damage is extensive and severe.

(47) "State" means a state, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Northern Marianas, the Trust Territory of the Pacific Islands, and the Virgin Islands.

(48) "Surfacing ACM" means surfacing material that is ACM.

(49) "Surfacing material" means material in a school building that is sprayed on, troweled on, or otherwise applied to surfaces, such as acoustical plaster on ceilings and fireproofing materials on structural members, or other materials on surfaces for acoustical, fireproofing, or other purposes.

(50) "Thermal system insulation" means material in a school building applied to pipes, fittings, boilers, breeching, tanks, ducts, or other interior structural components to prevent heat loss or gain, or water condensation, or for other purposes.

(51) "Thermal system insulation ACM" means thermal system insulation that is ACM.

(52) "Timely manner" means that the LEA has fulfilled or is fulfilling its responsibilities in a manner that is as expeditious as possible, taking into account circumstances which are unique to the LEA. The determination of timeliness shall be made by the cabinet.

(53) "um" means micrometer.

(54) "Vibration" means the periodic motion of friable ACBM which may result in the release of asbestos fibers.

Section 2. Applicability. The provisions of this regulation shall apply to all LEAs.

Section 3. Responsibilities of LEAs. (1) The subject matter of this regulation is governed by 40 CFR 763.80, 763.84, 763.85, 763.86, 763.87, 763.88, 763.90, 763.91, 763.92, 763.93, 763.94, 763.95, and 763.99, and Appendices A, B, and D, as promulgated by the U.S. EPA on October 30, 1987 (52 FR 41846). All LEAs shall comply with the provisions of the federal regulations listed in this subsection.

(2) No LEA may permit, allow, or require any individual or other person to perform any asbestos abatement project after October 12, 1988, unless the individual has been issued by the cabinet an accreditation certificate to so engage in these projects in accordance with the provisions of 401 KAR 63:045, which is currently in effect, and which is maintained on his person.

(3) LEAs shall revise their management plans when changes in the schools, school buildings, status of the ACM, or response actions occur. The LEA may submit only the revised portion of the plan. If the entire plan is resubmitted then the revised portions shall be clearly indicated. These revisions shall comply with the applicable provisions of 40 CFR 763.80, 763.84, 763.85, 763.86, 763.87, 763.88, 763.90, 763.91, 763.92, 763.93, 763.94, 763.95, and 763.99, and Appendices A, B, and D. LEAs shall submit the revisions according to the provisions of Section 5 of this regulation.

Section 4. Deferrals. If a LEA is unable to submit to the cabinet its management plan

required in 40 CFR 763.93 by October 12, 1988, it may request a deferral to May 9, 1989, for the submission of the plan for one (1) or more schools under its jurisdiction. Deferral requests shall be submitted to the cabinet by the original due date of October 12, 1988, shall be notarized, and shall contain all of the requirements of subsections (1) to (5) of this section. Deferral requests may be submitted using forms prepared by the cabinet for that purpose.

(1) A listing of all schools covered by the request.

(2) A statement and brief explanation as to why the LEA, despite good faith efforts, will not be able to meet the original October 12, 1988, deadline for submittal of its management plan.

(3) A statement that the LEA has made at least one (1) of the following documents available for inspection at each school for which a deferral is sought:

(a) A solicitation by the LEA to contract with an accredited inspector or accredited management planner for inspection or management plan development, respectively;

(b) A letter certifying that school district personnel are enrolled in an EPA-approved training course for inspection and management plan development;

(c) Documentation showing that suspected ACM from the school is being analyzed at an accredited laboratory; or

(d) Documentation showing that an inspection or management plan has been completed in at least one (1) other school under the LEA's authority.

(4) A statement giving assurance that the LEA has carried out notification of affected groups and, for public schools, a public meeting. Before filing a deferral request, a LEA shall notify affected parent, teacher, and employee organizations of its intent to file its request. For public schools, the LEA shall discuss the request at a public meeting of the school board, and affected organizations shall be notified in advance of the time and place of the meeting.

(5) A proposed schedule outlining all significant activities leading up to submission of a management plan by May 9, 1989, including the inspection of the school. This schedule shall contain a deadline of no later than December 22, 1988, for entering into a contract with an accredited inspector, unless inspections are to be performed by accredited school personnel. Laboratory analysis and management plan development shall also be included in the activity schedule.

(6) The cabinet shall respond to the LEA in writing within thirty (30) days of receipt of the request to acknowledge whether the deferral request is complete or incomplete. If incomplete, the cabinet shall identify in the response the items which are missing from the request. The LEA may correct and refile its request with the cabinet no later than fifteen (15) days after it has received a response from the cabinet.

(7) The deferral request shall be considered to be granted only when the cabinet has responded in writing that the deferral request is accepted as complete.

(8) An LEA whose deferral request has been approved shall submit to the cabinet a management plan no later than May 9, 1989. The

plan shall include a copy of the deferral request and the appropriate assurances of subsections (1) to (5) of this section which accompanied the original request. The cabinet shall review the deferred management plan in accordance with the procedures in Section 6 of this regulation, except the LEA shall submit a revised deferred plan within thirty (30) days of disapproval. The cabinet may extend the thirty (30) day period by not more than thirty (30) days.

(9) Deferral or acceptance of the deferred management plan shall not exempt the LEA from its responsibility to begin implementation of the deferred management plan by July 9, 1989.

Section 5. Submittal of Plans. (1) Management plans required in 40 CFR 763.93, deferred management plans, and revisions to management plans shall be submitted using forms approved by the cabinet for that purpose and shall contain all the information that the cabinet deems is necessary to determine if the plan should be approved, including all information required in 40 CFR 763.93.

(2) Except as specified in subsection (3) of this section, management plans, deferred management plans, and revisions to management plans submitted after October 12, 1988, shall include the fee specified in Section 8 of this regulation. LEAs which submitted plans on or before October 12, 1988, shall submit to the cabinet the fee specified in Section 8 of this regulation by December 12, 1988.

(3) Management plan revisions shall be submitted as follows:

(a) If an LEA acquires or otherwise puts into service any building or portion of a building, and if that building or portion of a building would have been required to be included in the management plan if it had been in use at the time the plan was submitted, then the LEA shall submit a management plan for the building or portion to the cabinet for review and approval, with the fees required in Section 8 of this regulation. The LEA shall notify the cabinet of any building that will be deleted from the plan prior to its deletion; this notification shall not require the submittal of any fees.

(b) If an LEA intends to change a planned response action from removal to any other response action, then the LEA shall submit a revision to the management plan for review and approval, with the fees required in Section 8 of this regulation.

(c) If an LEA intends to delay the date of removal, encapsulation, or enclosure of asbestos-containing material for more than one (1) year beyond the date identified in the management plan, then the LEA shall submit a revision to the management plan for review and approval with the required fees. If the delay in these response actions shall be one (1) year or less from the date identified in the management plan, then the LEA shall notify the cabinet of the new date. The notification shall not constitute a plan revision and shall not require the submittal of any fees, but the proposed action shall require approval by the cabinet before the response action begins.

(d) If an LEA intends to perform any response actions identified in paragraph (c) of this subsection in advance of the date identified in the management plan, then the LEA shall notify the cabinet of the new date, and shall receive

the cabinet's approval before the response action begins. The notification shall not require the submittal of any fees.

(e) If an LEA intends to remove asbestos-containing material which is identified in the management plan to be encapsulated, enclosed, or otherwise treated in a manner other than removal, then the LEA shall notify the cabinet of the proposed removal. The notification shall not constitute a plan revision and shall not require the submittal of any fees, but the proposed action shall require the cabinet's approval before the response action begins.

(f) An LEA shall not be required to notify the cabinet of small scale, short-duration maintenance activities and shall not be required to submit plan revisions or fees for these activities. Notification of these activities may be required under 401 KAR 57:011.

Section 6. Consideration of Management Plans.

(1) At any time, the cabinet shall disapprove the management plan, deferred management plan, or revised management plan if the plan:

(a) Does not conform with the requirements of this regulation, 401 KAR 57:011, or 401 KAR 63:042;

(b) Does not assure that any action or service required to be performed by accredited individuals in any of the regulations contained in 40 CFR 763, Subpart E will be performed by accredited individuals, and does not assure that the provisions of Section 3(2) of this regulation will be met;

(c) Does not contain a response action schedule which is reasonable and timely as determined by the cabinet, taking into account circumstances relevant to the speed at which the friable ACM in the school buildings under the LEAs authority should be responded to, including human exposure to the asbestos while the friable ACM remains in the school building, and the ability of the LEA to continue to provide educational services to the community; or

(d) Does not provide response actions which adequately protect human health or the environment from friable ACBM.

(2) The cabinet shall deny a management plan if the cabinet determines that the LEA willfully made any misstatements in the plan, or the LEA cannot reasonably be expected to fulfill the obligations of the plan.

(3) If the cabinet disapproves a plan, the cabinet shall explain in writing to the LEA the reasons why the plan was disapproved and the changes that shall be made in the plan. Within

thirty (30) days after the date on which notice of the plan's disapproval is received, the LEA shall revise the plan to conform with the suggested changes. The cabinet may extend the thirty (30) day period for not more than ninety (90) days.

Section 7. Notification. As required in 40 CFR 763.93 the management plan shall contain the dates when each response action will begin and end. If the schedule is amended, the LEA shall notify the cabinet of any response action which will occur and which must be performed by an accredited individual, at least ten (10) days prior to commencement, unless the response action is an emergency response action that must be performed by an accredited individual. The LEA shall notify the cabinet of these emergency response actions as soon as possible, as determined by the cabinet, prior to commencing the emergency response action. If the notification is not in writing, then written confirmation of the response action shall also be provided as soon as possible, as determined by the cabinet.

Section 8. Fees. Fees required in this section shall be submitted to the cabinet by check or money order, payable to the Kentucky State Treasurer.

(1) The fee for review of each management plan or deferred management plan shall be sixty (60) dollars for each school building that is identified in the plan as containing ACM and thirty (30) dollars for each school building that is identified in the plan as not containing ACM.

(2) The fee for review of a revision to the management plan shall be thirty (30) dollars for each building contained in the revision and in the original management plan, for which a new response action is proposed. For each new building contained in the revision, the fee shall be sixty (60) dollars if the building contains ACM, and thirty (30) dollars if it does not contain ACM.

Section 9. Penalties. Any LEA which violates any provision of this regulation shall be subject to the appropriate enforcement action as provided under KRS 224.994.

CARL H. BRADLEY, Secretary

WILLIAM F. KNAPP, JR., Acting Commissioner

APPROVED BY AGENCY: December 14, 1988

FILED BY LRC: December 14, 1988 at 4 p.m.

PROPOSED AMENDMENTS RECEIVED THROUGH DECEMBER 15, 1988

PERSONNEL BOARD
(Proposed Amendment)

101 KAR 1:325. [Initial] Probationary periods [in excess of six (6) months].

RELATES TO: KRS 18A.075, 18A.0751, 18A.111

STATUTORY AUTHORITY: KRS Chapter 13A, 18A.0751

NECESSITY AND FUNCTION: KRS 18A.075 requires the Personnel Board to promulgate comprehensive administrative regulations consistent with the provisions of KRS 18A.005 to 18A.200. KRS 18A.0751 specifies that the Personnel Board promulgate comprehensive administrative regulations for the classified service governing probation. KRS 18A.111 relates specifically to probationary periods. [18A.111] provides that specified job classifications may require an initial probationary period in excess of six (6) months. KRS 18A.0751 provides that initial probationary periods in excess of six (6) months be established by administrative regulation. This regulation is to implement these statutory provisions.]

Section 1. Initial Probationary Period[s] for Specific Job Classifications]. (1) The initial probationary period shall be computed from the effective date of appointment to the corresponding date in the sixth or 12th month, depending upon the length of initial probationary period, except as provided in KRS 18A.111.

(2) The following job classifications shall require an initial probationary period in excess of six (6) months[, as specified]:

TITLE CODE	JOB CLASSIFICATION	LENGTH OF INITIAL PROBATIONARY PERIOD
2001	Fish and Wildlife Law Enforcement Officer Trainee	12 months
2112	DES Duty Officer	12 months
2113	DES Duty Officer Senior	12 months
2408	MVE Trainee	12 months
2410	MVE Officer Trainee	12 months
2435	MVE Inspector Trainee	12 months
2480	Water Patrol Officer Second Class	12 months
2481	Water Patrol Officer First Class	12 months
5105	Vocational Education Instructor	12 months
5108	Industrial and Trade Instructor	12 months
5110	MSHA Instructor	12 months
5126	Teacher of Blind and/or Visually Impaired Rank III	12 months
5127	Teacher of Blind and/or Visually Impaired Rank II	12 months
5128	Teacher of Blind and/or Visually Impaired Rank I	12 months
5131	Teacher of Deaf and/or Hearing Impaired Rank III	12 months
5132	Teacher of Deaf and/or Hearing Impaired Rank II	12 months
5133	Teacher of Deaf and/or Hearing Impaired Rank I	12 months
5141	Education Teacher Rank III	12 months
5142	Education Teacher Rank II	12 months
5143	Education Teacher Rank I	12 months

7203	Forest Guard	12 months
7205	Forest Ranger	12 months
7207	Forest Ranger Unit	12 months
7209	Forest Ranger District	12 months
7213	Forestry District Equipment Supervisor	12 months
7215	Nursery Foreman	12 months
7217	Nursery Superintendent	12 months
7221	Forester	12 months
7222	Forester Senior	12 months
7224	Forester Chief	12 months
7226	Forester District	12 months
7228	Forester Regional	12 months
7231	Rural Fire Suppression Technical Advisor	12 months
7232	Forestry Program Specialist	12 months
7233	Forestry Program Coordinator	12 months
7235	Forestry Program Manager	12 months

(3) If the length of the initial probationary period for a job classification is changed, an employee serving an initial probationary period on the effective date of the change shall serve the shorter of the initial probationary periods. When the employee is appointed, the employee's appointing authority shall advise the employee of the period of his initial probation.

Section 2. Promotional Probationary Period. [Other Provisions.] (1) An employee who satisfactorily completes the promotional probationary period shall be granted status in the position to which he has been promoted. Unless an employee receives notice prior to the end of his promotional probationary period that he has failed to satisfactorily complete the promotional probationary period and that he is being reverted, the employee shall be deemed to have served satisfactorily and shall acquire status in the position to which he has been promoted. [Except for the length of the initial probationary period, the provisions of 101 KAR 1:320 shall apply to an employee appointed to a job classification specified in Section 1 of this regulation.]

(2) An employee who fails to satisfactorily complete a promotional probationary period shall be reverted to his former position or to a position in the same job classification as his former position. If an employee fails to satisfactorily complete a promotional probationary period, he shall be notified in writing at least ten (10) working days prior to the effective date of his reversion. The notification shall advise the employee of the effective date of reversion. When the employee is notified, copies of the notice of reversion shall be forwarded to the Commissioner of Personnel on the same date notice is delivered to the employee. [If the length of the initial probationary period for a job classification is changed, an employee serving an initial probationary period on the effective date of the change shall be required to serve the shorter of the initial probationary periods. At the time of appointment, the employee's appointing authority shall advise the employee of the period of his initial probation.]

(3) The promotional probationary period shall be computed from the effective date of promotion to the corresponding date in the sixth month following promotion, except as provided in KRS 18A.111.

Section 3. Probationary Period Upon Reinstatement. An employee who is reinstated to a position in the classified service shall serve a promotional probationary period.

ARTHUR HATTERICK, JR., Secretary

APPROVED BY AGENCY: December 9, 1988

FILED WITH LRC: December 13, 1988 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 24, 1989 at 8:30 a.m. in Room 360, Capitol Annex Building. Individuals interested in attending this hearing shall notify this agency in writing by January 19, 1989, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Personnel Board, Room 372, Capitol Annex Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Arthur Hatterick, Jr.

(1) Type and number of entities affected: All state agencies with classified employees.

(a) Direct and indirect costs or savings to those affected: None

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body: None

(a) Direct and indirect costs or savings: None

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: None

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. This regulation must apply to all classified employees and all state agencies with classified employees. Further tiering has not been utilized in the administrative regulations of the Personnel Board in that the board is a quasi-judicial body and as such has no latitude not granted by statute to utilize tiering methods outlined in KRS 13A.210.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The rules concerning standards for the establishment and maintenance of a merit system for state governmental units receiving federal grants in aid were issued by the Office of Personnel Management and became effective on February 9, 1979. These rules were revised April 4, 1983, and are now codified as 5 CFR, Part 900, Subpart F, Sections 900.601-900.606 (48 F.R. 9209, March 4, 1983).

2. State compliance standards. The purpose of these regulations is to implement provisions of Title II of the Intergovernmental Personnel Act of 1970, as amended, relating to federally required merit personnel systems in state agencies. Certain federal grant programs require, as a condition of eligibility, that state agencies that receive grants establish merit personnel systems for their personnel engaged in administration of the grant-aided program. These merit personnel systems are in some cases required by specific federal grant statutes and in some cases required by specific federal grant statutes and in other cases are required by regulations of the federal grantor agencies.

3. Minimum or uniform standards contained in the federal mandate. The standards required for a merit system of personnel administration include such merit principles as:

(a) Recruiting, selecting, and advancing employees on the basis of their relative ability, knowledge, and skills, including open consideration of qualified applicants for initial appointment.

(b) Providing equitable and adequate compensation.

(c) Training employees, as needed, to assure high quality performance.

(d) Retaining employees on the basis of the adequacy of their performance, correcting inadequate performance, and separating employees whose inadequate performance cannot be corrected.

(e) Assuring fair treatment of applicants and employees in all aspects of personnel administration without regard to political affiliation, race, color, national origin, sex, religious creed, age or handicap and with proper regard for their privacy and constitutional rights as citizens. This "fair treatment" principle includes compliance with the federal equal employment opportunity and nondiscrimination laws.

(f) Assuring that employees are protected against coercion for partisan political purposes and are prohibited from using their official authority for the purpose of interfering with or affecting the result of an election or a nomination for office.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The provisions of the federal merit standards recognizes fully the rights, powers and responsibility of state government and encourages innovation and allows for diversity in the design, execution and management of the system of personnel management, as provided by the Intergovernmental Personnel Act of 1970 if standards have certain specific requirements and options. The requirements and options have been exercised by the General Assembly in the

enactment of KRS Chapter 18A and its delegation of duties and responsibilities to the State Personnel Board and the Department of Personnel.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This regulation to our knowledge is not stricter than the federal mandate. It provides clarification as to the amount of time that must actually be worked by an employee during the probationary period.

REVENUE CABINET

Department of Professional & Support Services
(Proposed Amendment)

103 KAR 43:010. Accountable losses.

RELATES TO: KRS 138.210(1)

STATUTORY AUTHORITY: KRS Chapter 13A

NECESSITY AND FUNCTION: This regulation interprets the statute dealing with accountable losses and excludes other than licensed dealers.

Section 1. No allowance for losses of gasoline or special fuels on which the Kentucky tax has been paid can be made on gasoline or special fuels held in retail filling stations or in tanks other than bulk plant or distribution tanks by licensed dealers and gasoline or special fuels held in any tanks by parties other than licensed dealers. Such gasoline or special fuels having passed the statutory process of "receiving," the act of use, sale, distribution or delivery, on which the tax is levied, has already occurred.

Section 2. An allowance may be made by the cabinet for a loss of "received" gasoline or special fuels held in bulk and distribution tanks by licensed dealers from which sale or delivery is made, provided an affidavit signed by the licensed gasoline or special fuels dealer is furnished the cabinet.

Section 3. If, after investigation, the losses are proved to the satisfaction of the cabinet to have occurred the dealer will be advised to make a deduction from subsequent monthly reports equal to the amount of such approved losses.

C. EMMETT CALVERT, Secretary

APPROVED BY AGENCY: December 15, 1988

FILED WITH LRC: December 15, 1988 at noon

PUBLIC HEARING: A public hearing on this regulation shall be held on January 23, 1989 at 10:30 a.m. in Room 406 of the Capitol Annex, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by January 18, 1989, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed

administrative regulation to: Scott Akers, Revenue Cabinet, Division of Tax Policy and Legal Services, New Capitol Annex Building, Frankfort, Kentucky 40620.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Scott Akers

(1) Type and number of entities affected: The entities affected are 350 licensed gasoline dealers and, based on the provisions of HB 591, 450 licensed special fuels dealers.

(a) Direct and indirect costs or savings to those affected: No change in costs involving licensed gasoline dealers. Insignificant additional cost to licensed special fuels dealers to execute the required affidavit to substantiate the claim of accountable losses of special fuels.

1. First year: Same as (1)(a).

2. Continuing costs or savings: Same as (1)(a).

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional cost factors known. The only effect upon competition would be to provide a method for equal treatment to all licensed special fuels dealers who suffer accountable losses of fuel. Current provisions of the regulation are not changed for licensed gasoline dealers.

(b) Reporting and paperwork requirements: No change in reporting and paperwork requirements for licensed gasoline dealers. Insignificant reporting and paperwork requirements are involved for licensed special fuels dealers who must execute an affidavit to substantiate the claim of accountable losses and then claim any approved loss as a line item deduction on the dealers next monthly report filed with the Revenue Cabinet.

(2) Effects on the promulgating administrative body: No change in Revenue Cabinet functions regarding the gasoline tax. The cabinet will, however, be required to receive and process any special fuels dealer accountable loss claims and, if deemed necessary, investigate them and approve or deny the loss claimed. Due to the small number of anticipated special fuels loss claims, the overall effect on the Revenue Cabinet will be almost nil.

(a) Direct and indirect costs or savings: No change in costs involving the gasoline tax. Insignificant additional cost to process and investigate special fuels loss claims and approve or deny such claims. Total annual cost to administer special fuels loss claims is estimated at less than \$1,000 per year.

1. First year: Same as (2)(a).

2. Continuing costs or savings: Same as (2)(a).

3. Additional factors increasing or decreasing costs: None. Since the procedures required for special fuels losses mirror existing procedures for the gasoline tax, no employee training is required and additional investigations of special fuels loss claims is expected to be very insignificant.

(b) Reporting and paperwork requirements: A small increase in cabinet paperwork requirements will result from the extremely small number of anticipated special fuels loss claims. No change in requirements affecting gasoline losses.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: Amendment of

this regulation as proposed became essential due to statutory changes enacted through HB 591. There were no other alternatives available except to promulgate a separate regulation with the same language but referring to special fuels instead of gasoline. Such an alternative was deemed to be inefficient.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None known.

(a) Necessity of proposed regulation if in conflict: No conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

(6) Any additional information or comments: The amendments proposed to this regulation result directly from statutory changes enacted through HB 591.

TIERING: Was tiering applied? No. This regulation applies to all licensed gasoline and special fuels dealers. There is no statutory authority to provide preferential treatment on the basis of size or other criteria.

REVENUE CABINET

Department of Professional & Support Services
(Proposed Amendment)

103 KAR 43:020. Transporter's report.

RELATES TO: KRS 138.260

STATUTORY AUTHORITY: KRS Chapter 13A

NECESSITY AND FUNCTION: This regulation explains reporting requirements for controlling the movement of gasoline and special fuels in Kentucky. It interprets KRS 138.260 to include provisions for reporting gasoline and special fuels exported from Kentucky and sales of specified quantities to the United States Government.

Section 1. Every transportation company and every person, other than a licensed dealer or any consignee who has signed a certification in accordance with cabinet regulations, transporting gasoline from points within this state to points without this state, or transporting gasoline or special fuels in individual quantities of 2,000 gallons or more to the United States Government, shall report each such shipment to the Revenue Cabinet in the manner prescribed by the cabinet.

C. EMMETT CALVERT, Secretary

APPROVED BY AGENCY: December 15, 1988

FILED WITH LRC: December 15, 1988 at noon

PUBLIC HEARING: A public hearing on this regulation shall be held on January 23, 1989 at 11 a.m. in Room 406 of the Capitol Annex, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by January 18, 1989, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may

submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Scott Akers, Revenue Cabinet, Division of Tax Policy and Legal Services, New Capitol Annex Building, Frankfort, Kentucky 40620.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Scott Akers

(1) Type and number of entities affected: The entities affected are the 19 licensed transporters of motor fuels who, based on the provisions of HB 591, are now required to report the transportation of special fuels in addition to gasoline as previously required.

(a) Direct and indirect costs or savings to those affected: No change in costs involving licensed transporters transporting gasoline. Additional clerical cost will, however, be incurred by transporters to also report their transportation of special fuels.

1. First year: Same as (1)(a).

2. Continuing costs or savings: Same as (1)(a).

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional cost factors known. The only effect upon competition would be to provide a method for equal treatment to all persons who transport special fuels to help insure proper payment of the applicable tax by the licensed dealers who receive the fuel.

(b) Reporting and paperwork requirements: No change in reporting and paperwork requirements for transporters of gasoline. Additional reporting and paperwork requirements are involved for those transporters transporting special fuels. If both gasoline and special fuels are transported, only one reporting form is required to cover both types of fuel.

(2) Effects on the promulgating administrative body: No change in Revenue Cabinet functions regarding the gasoline tax. The cabinet will, however, be required to receive and process transporters reports of special fuels delivered. Such reporting will help insure proper reporting of special fuels receipts by the licensed special fuels dealers receiving the fuel.

(a) Direct and indirect costs or savings: No change in costs involving the gasoline tax. Insignificant additional cost to process and cross check special fuels transporter reports against licensed dealer reports. Total annual cost to administer special fuels transporter reports is estimated at less than \$2,000 per year.

1. First year: Same as (2)(a).

2. Continuing costs or savings: Same as (2)(a).

3. Additional factors increasing or decreasing costs: None. Since the form and procedures required for special fuels transporter reports are combined with existing procedures for gasoline transporters, no employee training is required and existing staff can easily absorb the administrative functions involved for the special fuels transporter reports.

(b) Reporting and paperwork requirements: An increase in cabinet paperwork requirements will result from the additional reporting volume received from transporters of special fuels, but existing staff can easily absorb the very limited administrative functions involved.

(3) Assessment of anticipated effect on state

and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: Amendment of this regulation as proposed became necessary due to statutory changes enacted through HB 591. There were no other alternatives available except to promulgate a separate regulation with the same language but referring to special fuels instead of gasoline. Such an alternative was deemed to be inefficient.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None known.

(a) Necessity of proposed regulation if in conflict: No conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

(6) Any additional information or comments: The amendments proposed to this regulation result directly from statutory changes enacted through HB 591.

TIERING: Was tiering applied? No. This regulation applies to all licensed gasoline and special fuels transporters. There is no statutory authority to provide preferential treatment on the basis of size or other criteria.

REVENUE CABINET

Department of Professional & Support Services
(Proposed Amendment)

103 KAR 43:030. Received gasoline and special fuels.

RELATES TO: KRS 138.210(5)

STATUTORY AUTHORITY: KRS Chapter 13A

NECESSITY AND FUNCTION: This regulation interprets the statute which defines "received gasoline" and "received special fuels" and outlines certification procedures for gasoline and special fuels exported to other states.

Section 1. Gasoline or special fuel produced, refined, manufactured, or compounded at any refinery in this state by any person shall be deemed to be received by such person when it has been withdrawn from refinery storage for bulk delivery to destinations within this state, or placed in any tank from which sales or deliveries are made into the fuel tanks of motor vehicles at the refinery where it is produced, refined, manufactured or compounded.

(1) Provided that sales to other licensed dealers for delivery into refinery, marine or pipeline terminal storage facilities shall be deemed to be received when withdrawn for bulk delivery from the purchaser's storage facilities in accordance with Sections 1 and 2 of this regulation.

(2) Sales to other licensed dealers who do not have refinery, marine or pipeline storage facilities shall be deemed to be received by the purchasing dealer at the time gasoline or special fuel is withdrawn from the seller's storage facilities.

Section 2. Gasoline or special fuel acquired by any dealer in this state, delivered by boat at a marine terminal for storage, or by pipeline at a pipeline terminal for storage, shall be deemed to be received by such dealer when it has been withdrawn from such marine or pipeline

terminal storage for bulk delivery to destinations within this state, or placed in any tank from which sales or deliveries are made into the fuel tanks of motor vehicles at such marine or pipeline terminal.

(1) Provided that sales to other licensed dealers for delivery into refinery, marine or pipeline terminal storage facilities shall be deemed to be received when withdrawn for bulk delivery from the purchaser's storage facilities in accordance with Section 1 or 2 of this regulation.

(2) Sales to other licensed dealers who do not have refinery, marine or pipeline facilities shall be deemed to be received by the purchasing dealer at the time gasoline or special fuel is withdrawn from the seller's storage facilities.

Section 3. Gasoline or special fuel imported by any dealer and not delivered into refinery, marine or pipeline terminal storage facilities in this state shall be deemed to be received when it has been placed into storage tanks or other containers, including tank cars or tank trucks, for use, or subject to withdrawal for use, delivery, sale or other distribution.

Section 4. Gasoline or special fuel sold by one Kentucky licensed dealer to another Kentucky licensed dealer shall be deemed to be received by the purchasing dealer unless the selling dealer reports and pays the Kentucky motor fuel tax thereon.

Section 5. [4.] With respect to gasoline or special fuel loaded within this state into tank trucks owned or operated by the consignee thereof and consigned to destinations outside this state, the licensed dealer shall obtain from such consignee a certification and undertaking in substantially the following form: "In consideration of purchasing in Kentucky gasoline or special fuel consigned to destinations outside Kentucky without paying the licensed dealer the tax imposed by KRS 138.220, the undersigned hereby covenants and agrees to pay upon demand to the Kentucky Revenue Cabinet all applicable taxes imposed upon such gasoline or special fuel."

Section 6. [5.] Subject to first obtaining the certification required by Section 5 [4] of this regulation, a licensed dealer may establish that gasoline or special fuel loaded within [with] this state into tank trucks owned or operated by the consignee is consigned to and will be delivered to destinations outside this state by obtaining from such consignee or his representative the following certificate: "I certify under penalties of law that the gasoline or special fuel received as shown hereon (or as received on Ticket No. _____) will be delivered to the destination(s) outside this state as indicated."

(Signature)

C. EMMETT CALVERT, Secretary

APPROVED BY AGENCY: December 15, 1988

FILED WITH LRC: December 15, 1988 at noon

PUBLIC HEARING: A public hearing on this regulation shall be held on January 23, 1989 at 11:30 a.m. in Room 406 of the Capitol Annex, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency

in writing by January 18, 1989, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Scott Akers, Revenue Cabinet, Division of Tax Policy and Legal Services, New Capitol Annex Building, Frankfort, Kentucky 40620.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Scott Akers

(1) Type and number of entities affected: The entities affected are 350 licensed gasoline dealers and, based on the provisions of HB 591, 450 licensed special fuels dealers. Also, an estimated 5,000 to 10,000 consumers of nonhighway special fuels will have to pay tax to special fuels dealers and obtain a refund from the Revenue Cabinet for that fuel not used on the highways.

(a) Direct and indirect costs or savings to those affected: No change in costs involving licensed gasoline dealers. For licensed special fuels dealers, payment of the special fuels tax is advanced from the time the dealers sell the fuel for highway use to the point of receipt of the fuel by such dealers. Payment of the tax to the Commonwealth will, therefore, be advanced for those special fuels received but not sold during the same reporting month. However, since the licensed special fuels dealers will collect the tax from most all consumers when the fuels are sold, more tax will be collected than in the past. The overall cash flow of such dealers is not expected to change significantly since any negative effect of paying the tax earlier to the Commonwealth is expected to be offset by the positive cash flow effect from collecting more tax from consumers. Nonhighway consumers, except for those who use the fuel for residential heating or agricultural purposes, will not have use of the tax paid until refunds are obtained from the Revenue Cabinet on a quarterly or annual basis. It is estimated that \$7.8 million paid by consumers but subject to refund will remain in the state treasury at the end of any fiscal year.

1. First year: Same as (1)(a).

2. Continuing costs or savings: Same as (1)(a).

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional cost factors known. The only effect upon competition would be to provide a method for equal treatment to all licensed special fuels dealers who receive special fuels. Current provisions of the regulation are essentially unchanged for licensed gasoline dealers.

(b) Reporting and paperwork requirements: No change in reporting and paperwork requirements for licensed gasoline dealers. The forms for reporting monthly special fuels receipts have necessarily been revised to reflect the new

point of taxation. Dealers must issue a refund invoice to consumers for each tax refundable sale. Consumers of nonhighway special fuels, except those who use the fuel for residential heating or agricultural purposes, will pay the tax to dealers and apply for quarterly or annual refund of the tax paid.

(2) Effects on the promulgating administrative body: No change in Revenue Cabinet functions regarding the gasoline tax. The cabinet will, however, be required to receive and process quarterly or annual refund claims by consumers.

(a) Direct and indirect costs or savings:

1. First year: No change in costs involving the gasoline tax. Special fuels dealers reporting forms were necessarily revised to reflect the change in the point of taxation. Such forms revisions are estimated to cost approximately \$5,000. The initial cost of issuing refund permits to qualifying consumers is estimated at \$10,000. The cost to process quarterly or annual refund claims is estimated at \$25,000.

2. Continuing costs or savings: The annual cost to process and store quarterly or annual refund claims is estimated at \$25,000. The annual cost of issuing refund permits is expected to be \$2,000 after the initial application period is completed.

3. Additional factors increasing or decreasing costs: None. Since the procedures required for special fuels dealer reporting mirror existing procedures for the gasoline tax, no employee training is required. Two positions have been created and staffed to process consumer permits and refund applications.

(b) Reporting and paperwork requirements: No change in cabinet paperwork requirements for special fuels tax since revised dealer reporting forms replaced existing forms. No change in requirements affecting gasoline dealer reporting. The cabinet will, however, be receiving, processing and storing consumer permits and refund applications. An estimated 20,000 to 25,000 refund permits are expected to be issued during FY 1988-89 with less than 1,000 per year thereafter. Refund applications are expected to total from 20,000 to 40,000 annually.

(3) Assessment of anticipated effect on state and local revenues: No change in revenues from the gasoline tax. Special fuels tax revenues will increase in FY 1988-89 to an estimated \$11.7 million due to the earlier point of taxation and improved compliance. Local government revenues would increase to the extent they share in state Road Fund revenue.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Amendment of the regulation as proposed became essential due to statutory changes enacted through HB 591. There were no other alternatives available except to promulgate a separate regulation with essentially the same language but referring to special fuels instead of gasoline. Such an alternative was deemed to be inefficient.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No conflict.

(a) Necessity of proposed regulation if in conflict: Not applicable.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

(6) Any additional information or comments:

The amendments proposed to this regulation result directly from statutory changes enacted through HB 591.

TIERING: Was tiering applied? No. This regulation applies to all licensed gasoline and special fuels dealers. There is no statutory authority to provide preferential treatment on the basis of size or other criteria.

REVENUE CABINET

Department of Professional & Support Services
(Proposed Amendment)

103 KAR 43:050. Measurement.

RELATES TO: KRS 138.250

STATUTORY AUTHORITY: KRS Chapter 13A

NECESSITY AND FUNCTION: This regulation, under the authority of KRS 138.250, prescribes the method of measurement of gasoline and special fuel required by the Revenue Cabinet.

Section 1. The number of gallons of gasoline or special fuel added to marine, pipeline or refinery storage may be measured by [gasoline] meters approved by the Revenue Cabinet or by measurement of the storage facilities before and after the addition. All additions, however measured, must be adjusted to sixty (60) degrees Fahrenheit before being entered on the terminal storage report.

Section 2. [Gasoline] Meters approved by the cabinet may be used to measure withdrawals from marine terminal, pipeline terminal or refinery storage provided all withdrawals are made by meter. All withdrawals, however measured, must be adjusted to sixty (60) degrees Fahrenheit before being entered on the terminal storage and monthly tax reports.

Section 3. Dealers' invoices for all withdrawals to other licensed Kentucky dealers must show gallons adjusted to sixty (60) degrees Fahrenheit even though the purchasing dealer may [is] actually be billed on measured gallons pursuant to a contract between the dealers. The purchasing dealers' monthly report filed with the cabinet shall likewise show the gallons received adjusted to sixty (60) degrees Fahrenheit.

C. EMMETT CALVERT, Secretary

APPROVED BY AGENCY: December 15, 1988

FILED WITH LRC: December 15, 1988 at noon

PUBLIC HEARING: A public hearing on this regulation shall be held on January 23, 1989 at 1 p.m. in Room 406 of the Capitol Annex, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by January 18, 1989, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public

hearing or written comments on the proposed administrative regulation to: Scott Akers, Revenue Cabinet, Division of Tax Policy and Legal Services, New Capitol Annex Building, Frankfort, Kentucky 40620.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Scott Akers

(1) Type and number of entities affected: The entities affected are 350 licensed gasoline dealers and, based on the provisions of HB 591, 450 licensed special fuels dealers.

(a) Direct and indirect costs or savings to those affected: No change in costs or savings to licensed gasoline or special fuels dealers.

1. First year: Same as (1)(a).

2. Continuing costs or savings: Same as (1)(a).

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional cost factors known. The only effect on competition would be to provide for equal treatment to all licensed special fuels dealers in calculating the volume of special fuels to help insure proper payment of the applicable tax by licensed dealers.

(b) Reporting and paperwork requirements: No change in reporting or paperwork requirements for either licensed gasoline or special fuels dealers.

(2) Effects on the promulgating administrative body: No change in Revenue Cabinet functions for either the gasoline or special fuels tax. The regulation provides a consistent method for calculating the volume of gasoline and special fuels received.

(a) Direct and indirect costs or savings: No change in costs involving either the gasoline tax or the special fuels tax.

1. First year: Same as (2)(a).

2. Continuing costs or savings: Same as (2)(a).

3. Additional factors increasing or decreasing costs: None known.

(b) Reporting and paperwork requirements: No change in cabinet reporting or paperwork requirements for either gasoline or special fuels.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: Amendment of this regulation as proposed became necessary due to statutory changes enacted through HB 591. There were no other alternatives available except to promulgate a separate regulation with the same language but referring to special fuels instead of gasoline. Such an alternative was deemed to be inefficient.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None known.

(a) Necessity of proposed regulation if in conflict: No conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

(6) Any additional information or comments: The amendments proposed to this regulation result primarily from statutory changes enacted through HB 591.

TIERING: Was tiering applied? No. This regulation applies to all licensed gasoline and special fuels dealers. There is no statutory authority to provide preferential treatment on

the basis of size or other criteria.

REVENUE CABINET
Department of Professional & Support Services
(Proposed Amendment)

103 KAR 43:060. Gasoline and special fuel defined.

RELATES TO: KRS 138.210(4)

STATUTORY AUTHORITY: KRS Chapter 13A

NECESSITY AND FUNCTION: This regulation provides guidelines for the identification of products as authorized by KRS 138.210(4) [and excludes products that do not fall within the meaning of gasoline].

Section 1. All liquid fuels, distillates and condensates defined as "gasoline" in KRS 138.210(4), and all other volatile and inflammable liquids produced, blended or compounded for the purpose of operating motor vehicles, showing a flash point of 110° Fahrenheit or below (Elliott Closed Cup Test) or when tested in a manner approved by the United States Bureau of Mines, are prima facie commercially usable in internal combustion engines and are taxable as gasoline.

Section 2. The term "gasoline" as used herein includes casing head, absorption, natural gasoline and condensates when used without blending as a motor fuel, or sold for use in motors direct, or is sold to those who blend for their own use; but this definition does not include casing head, absorption, natural gasoline and condensates when sold to be blended or compounded with other less volatile liquids in the manufacture of commercial gasoline for motor fuel.

Section 3. The term "gasoline" as used herein shall not include products commonly known as tractor fuels, industrial naphthas, rubber solvents, Stoddard solvent, mineral spirits, V. M. and P& naphthas, turpentine substitutes, pentane, hexane, heptane, octane, benzene, benzine, xyol, toluol, aromatic petroleum solvents, alcohol and liquefied gases which would not exist as liquids at a temperature of sixty (60) degrees Fahrenheit and a pressure of 14.7 pounds per square inch absolute, unless such products are used wholly or in combination with gasoline as a motor fuel.

Section 4. The terms "special fuel" and "special fuels" mean fuels as defined in KRS 138.210(4)(b).

C. EMMETT CALVERT, Secretary

APPROVED BY AGENCY: December 15, 1988

FILED WITH LRC: December 15, 1988 at noon

PUBLIC HEARING: A public hearing on this regulation shall be held on January 23, 1989 at 1:30 p.m. in Room 406 of the Capitol Annex, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by January 18, 1989, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed

administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Scott Akers, Revenue Cabinet, Division of Tax Policy and Legal Services, New Capitol Annex Building, Frankfort, Kentucky 40620.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Scott Akers

(1) Type and number of entities affected: The entities affected are 350 licensed gasoline dealers and, based on the provisions of HB 591, 450 licensed special fuels dealers.

(a) Direct and indirect costs or savings to those affected: No change in costs or savings to licensed gasoline or special fuels dealers.

1. First year: Same as (1)(a).

2. Continuing costs or savings: Same as (1)(a).

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional cost factors known. The only effect on competition would be to provide for equal treatment to all licensed dealers in determining what constitutes special fuels.

(b) Reporting and paperwork requirements: No change in reporting or paperwork requirements for either gasoline or special fuels dealers.

(2) Effects on the promulgating administrative body: No change in Revenue Cabinet functions for either gasoline or special fuels tax. The regulation provides a consistent method for determining what constitutes gasoline and special fuels.

(a) Direct and indirect costs or savings: No change in costs involving either the gasoline tax or the special fuels tax.

1. First year: Same as (2)(a).

2. Continuing costs or savings: Same as (2)(a).

3. Additional factors increasing or decreasing costs: None known.

(b) Reporting and paperwork requirements: No change in cabinet reporting or paperwork requirements.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: Amendment of the regulation as proposed became necessary due to statutory changes enacted through HB 591. There were no other alternatives available except to promulgate a separate regulation for special fuels. Such an alternative was deemed to be inefficient.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: The definition of special fuels duplicates that contained in KRS 138.210(4)(b). However, it is deemed desirable by the Revenue Cabinet to include such definition within this regulation so as to assist dealers in making the distinction between gasoline and special fuels.

(a) Necessity of proposed regulation if in conflict: No conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

(6) Any additional information or comments:

The amendments to this regulation result from statutory changes enacted through HB 591.

TIERING: Was tiering applied? No. This regulation applies to all licensed gasoline and special fuels dealers. There is no statutory authority to provide preferential treatment on the basis of size or other criteria.

REVENUE CABINET

**Department of Professional & Support Services
(Proposed Amendment)**

103 KAR 43:070. Sales of gasoline to U.S. government.

RELATES TO: KRS 138.240

STATUTORY AUTHORITY: KRS Chapter 13A

NECESSITY AND FUNCTION: This regulation interprets KRS 138.240 and provides a means whereby an unlicensed dealer may receive credit for tax paid on sales of gasoline to the United States government.

Section 1. When gasoline, in single deliveries of not less than 2,000 gallons each, is sold by an unlicensed dealer to the United States government, its agencies or instrumentalities, the Kentucky licensed dealer who pays the state tax on said gasoline shall allow the unlicensed dealer tax credit equal to the total amount of the tax evidenced by invoices to the United States government, its agencies or instrumentalities.

Section 2. The Kentucky licensed gasoline dealer shall, on each monthly report, take credit equal to the total tax value of all valid invoices received during the month for which the report is made.

C. EMMETT CALVERT, Secretary

APPROVED BY AGENCY: December 15, 1988

FILED WITH LRC: December 15, 1988 at noon

PUBLIC HEARING: A public hearing on this regulation shall be held on January 23, 1989 at 2 p.m. in Room 406 of the Capitol Annex, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by January 18, 1989, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Scott Akers, Revenue Cabinet, Division of Tax Policy and Legal Services, New Capitol Annex Building, Frankfort, Kentucky 40620.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Scott Akers

(1) Type and number of entities affected: The entities affected are 350 licensed gasoline dealers and the United States Government.

(a) Direct and indirect costs or savings to those affected: No change in costs or savings to licensed gasoline dealers or the United States government.

1. First year: Same as (1)(a).

2. Continuing costs or savings: Same as (1)(a).

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional cost factors known. The only effect upon competition would be to provide for equal treatment to all licensed gasoline dealers selling gasoline to the United States government.

(b) Reporting and paperwork requirements: No change in reporting or paperwork requirements for licensed gasoline dealers or the United States government.

(2) Effects on the promulgating administrative body: No change in Revenue functions. The proposed amendment clarifies that only licensed gasoline dealers can qualify to take credit for sales of gasoline to the United States government. The statutory provisions involved do not apply to sales of special fuels and, therefore, it became necessary to clarify that only licensed gasoline dealers may take the allowable credit.

(a) Direct and indirect costs or savings: No change in costs or savings.

1. First year: Same as (2)(a).

2. Continuing costs or savings: Same as (2)(a).

3. Additional factors increasing or decreasing costs: None known.

(b) Reporting and paperwork requirements: No change in cabinet reporting or paperwork requirements.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: Amendment of this regulation became necessary due to statutory changes enacted through HB 591. There was no other alternative available to insure clarity.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: No conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

(6) Any additional information or comments: The amendments to this regulation result from statutory changes enacted through HB 591.

TIERING: Was tiering applied? No. This regulation applies to all licensed gasoline dealers. There is no statutory authority to provide preferential treatment on the basis of size or other criteria.

REVENUE CABINET

**Department of Professional & Support Services
(Proposed Amendment)**

103 KAR 43:080. Assignment.

RELATES TO: KRS 138.341, 138.342

STATUTORY AUTHORITY: KRS Chapter 13A

NECESSITY AND FUNCTION: This regulation provides for more effective administration of tax refunds on gasoline or special fuel used in aircraft by permitting assignment of the right of refund under certain specified conditions.

Section 1. The right to receive any refund under the provisions of KRS 138.341 and 138.342 shall be assignable.

(1) Any person who purchases gasoline or special fuel for use in the operation of aircraft may assign his claim for the tax refund to the seller of such gasoline or special fuel if the seller has posted a bond with the cabinet, and provided the aviation gasoline or special fuel purchased by the assignor is delivered directly into the fuel tank of aircraft owned or operated by him, or his authorized agent.

(2) Such assignment shall be evidenced by noting upon the face and all copies of the retail sale invoice the following: "TAX REFUND ASSIGNED TO SELLER. Signed: (Purchaser or Agent.)"

C. EMMETT CALVERT, Secretary

APPROVED BY AGENCY: December 15, 1988

FILED WITH LRC: December 15, 1988 at noon

PUBLIC HEARING: A public hearing on this regulation shall be held on January 23, 1989 at 2:30 p.m. in Room 406 of the Capitol Annex, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by January 18, 1989, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Scott Akers, Revenue Cabinet, Division of Tax Policy and Legal Services, New Capitol Annex Building, Frankfort, Kentucky 40620.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Scott Akers

(1) Type and number of entities affected: The entities affected are the 58 airport operators who sell aviation gasoline or special fuel who have posted the required bond to receive refunds of the tax paid on such fuel. An unknown number of aircraft fuel purchasers are also affected.

(a) Direct and indirect costs or savings to those affected: No change in costs or savings involving aviation gasoline. If special fuels are sold for use in aircraft, a tax refund may now be obtained by the qualified airport operator instead of purchasing such fuel tax-free under the law effective prior to HB 591. Such refund requests are filed on the same form as for aviation gasoline. Since little or no special fuels are used in the operation of aircraft, no additional cost should result.

1. First year: Same as (1)(a).

2. Continuing costs or savings: Same as (1)(a).

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional cost factors known. The only effect on competition would be to provide for equal treatment of all qualified airport operators selling aviation gasoline who might

also sell special fuels for use in the operation of aircraft.

(b) Reporting and paperwork requirements: No change in reporting or paperwork requirements for aviation gasoline. Any qualified airport operator would include aviation special fuels on the same form used to obtain tax refund for aviation gasoline.

(2) Effects on the promulgating administrative body: No change in Revenue Cabinet functions for aviation gasoline. Since little or no special fuels are used in the operation of aircraft, any possible effects on the cabinet would be virtually nil.

(a) Direct and indirect costs or savings: No change in costs involving the gasoline tax. Insignificant cost to process any potential refund claim which might include special fuels.

1. First year: Same as (2)(a).

2. Continuing costs or savings: Same as (2)(a).

3. Additional factors increasing or decreasing costs: None known.

(b) Reporting and paperwork requirements: No change in cabinet reporting and paperwork requirements is anticipated.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: Amendment of this regulation became necessary due to statutory changes enacted through HB 591. There were no other alternatives available except to promulgate a separate regulation for special fuels. Such an alternative was deemed to be inefficient.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: No conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

(6) Any additional information or comments: The amendments to this regulation result directly from statutory changes enacted through HB 591.

TIERING: Was tiering applied? No. This regulation applies to all qualified airport operators. There is no statutory authority to provide preferential treatment on the basis of size or other criteria.

REVENUE CABINET

Department of Professional & Support Services
(Proposed Amendment)

103 KAR 43:090. Tax refund; aircraft.

RELATES TO: KRS 138.341, 138.230

STATUTORY AUTHORITY: KRS Chapter 13A

NECESSITY AND FUNCTION: This regulation interprets the statute dealing with gasoline and special fuels tax refund to aircraft operators engaged in transportation of persons and property and lists requirements for filing refund claims and maintaining records.

Section 1. All persons claiming refund of tax paid on gasoline or special fuel used in airplanes engaged in the transportation of persons and property shall file application for such refunds on or before the last day of each month, covering the preceding month, and shall

furnish all information required, including a list of individual purchases showing the date of purchase, vendor, address of vendor, and quantity of each purchase. The original invoice covering each purchase shall be attached to the application for refund. Carbon copies made at the time of issuance of the original invoice can be considered original.

Section 2. All persons filing application for such refunds shall preserve and maintain for a period of five (5) [two (2)] years copies of all invoices, of both purchase and sale, delivery tickets, and any other records pertinent to the purchase and use of the motor fuel. These records shall be maintained within this Commonwealth or the cost of auditing shall be paid by the person claiming the refund.

C. EMMETT CALVERT, Secretary

APPROVED BY AGENCY: December 15, 1988

FILED WITH LRC: December 15, 1988 at noon

PUBLIC HEARING: A public hearing on this regulation shall be held on January 23, 1989 at 3 p.m. in Room 406 of the Capitol Annex, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by January 18, 1989, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Scott Akers, Revenue Cabinet, Division of Tax Policy and Legal Services, New Capitol Annex Building, Frankfort, Kentucky 40620.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Scott Akers

(1) Type and number of entities affected: The entities affected are 58 airport operators who sell aviation gasoline or special fuel who have posted the required bond to receive refunds of the tax paid on such fuel.

(a) Direct and indirect costs or savings to those affected: Since qualified airport operators will be required to retain refund records for 5 years instead of 2 years, an increase in records storage costs could result. However, the required records are very small in volume. Those qualified airport operators who also sell special fuels will also be required to keep refund records for 5 years. However, since little or no special fuels are used in the operation of aircraft, any storage cost should be almost nil.

1. First year: Unknown, but very small, cost to qualified airport operators to store the additional records required.

2. Continuing costs or savings: Same as (1)(a)1.

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional cost factors known. The only

effect on competition would be to provide for equal treatment of all qualified airport operators selling gasoline or special fuels for use in the operation of aircraft.

(b) Reporting and paperwork requirements: No additional paperwork would be created for gasoline, but existing paperwork would have to be retained 3 additional years. Any qualified airport operator would include aviation special fuels on the same form used to obtain refund for aviation gasoline. Invoices and other records related to special fuels refunds must be retained for 5 years.

(2) Effects on the promulgating administrative body: No change in Revenue Cabinet functions for aviation gasoline. Since little or no special fuels are used in the operation of aircraft, any possible effects on the cabinet would be virtually nil.

(a) Direct and indirect costs or savings: No change in costs involving the gasoline tax. Insignificant cost to process any potential refund claim which might include special fuels.

1. First year: Same as (2)(a).

2. Continuing costs or savings: Same as (2)(a).

3. Additional factors increasing or decreasing costs: None known.

(b) Reporting and paperwork requirements: No change in cabinet reporting and paperwork requirements is anticipated.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: Amendment of this regulation became necessary due to statutory changes enacted through HB 591. There were no other alternatives available although the amendment affecting special fuels could have been promulgated in a separate regulation. Such an alternative was deemed to be inefficient.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: Not applicable.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

(6) Any additional information or comments: The amendments to this regulation result from statutory changes enacted through HB 591.

TIERING: Was tiering applied? No. This regulation applies to all qualified airport operators. There is no statutory authority to provide preferential treatment on the basis of size or other criteria.

REVENUE CABINET

Department of Professional & Support Services
(Proposed Amendment)

103 KAR 43:100. Farm tractor defined.

RELATES TO: KRS 138.344

STATUTORY AUTHORITY: KRS Chapter 13A

NECESSITY AND FUNCTION: This regulation defines "tractor" as referred to in KRS 138.344 in order to limit refunds of tax paid on gasoline or special fuel for agricultural uses.

Section 1. "Tractor" as referred to in KRS 138.344 shall mean a unit propelled by an internal combustion engine which is used on a farm for agricultural purposes, which is not

licensed to operate on the public highways, and is not used as a truck or passenger car.

C. EMMETT CALVERT, Secretary

APPROVED BY AGENCY: December 15, 1988

FILED WITH LRC: December 15, 1988 at noon

PUBLIC HEARING: A public hearing on this regulation shall be held on January 23, 1989 at 4 p.m. in Room 406 of the Capitol Annex, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by January 18, 1989, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Scott Akers, Revenue Cabinet, Division of Tax Policy and Legal Services, New Capitol Annex Building, Frankfort, Kentucky 40620.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Scott Akers

(1) Type and number of entities affected: The entities affected are the approximate 10,000 farmers who will be qualified to receive refunds of gasoline or special fuels tax or make tax-free purchases of special fuels pursuant to HB 591.

(a) Direct and indirect costs or savings to those affected: No change in costs or savings involving those farmers purchasing gasoline for agricultural purposes. No cost involved in extending the regulation to cover special fuels for agricultural purposes.

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional cost factors known. The only effect upon competition would be to provide for equal treatment of qualified farmers who have tractors which are used for agricultural purposes.

(b) Reporting and paperwork requirements: None. This regulation merely extends to special fuels tax the definition of "tractor" previously applicable only to the gasoline tax.

(2) Effects on the promulgating administrative body: No change in Revenue Cabinet functions.

(a) Direct and indirect costs or savings: No change in costs involving the gasoline tax or the special fuels tax.

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None known.

(b) Reporting and paperwork requirements: No change in Revenue Cabinet reporting and paperwork requirements.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: Amendment of

this regulation became necessary due to statutory changes enacted through HB 591. There were no other alternatives available except to file a separate regulation to cover special fuels. Such an alternative was deemed to be inefficient.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: Not applicable.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

(6) Any additional information or comments: The amendment to this regulation results from statutory changes enacted through HB 591.

TIERING: Was tiering applied? No. This regulation applies to all persons who use tractors for agricultural purposes. There is no statutory authority to provide preferential treatment on the basis of size or other criteria.

REVENUE CABINET

Department of Professional & Support Services
(Proposed Amendment)

103 KAR 43:110. Refund gasoline and special fuel use.

RELATES TO: KRS 138.344

STATUTORY AUTHORITY: KRS Chapter 13A

NECESSITY AND FUNCTION: This regulation interprets KRS 138.344 which prohibits the refunding of tax on gasoline or special fuel used in farm tractors while operating on the public highways.

Section 1. KRS 138.344 shall not be construed to prohibit the use of ["refund gasoline" in] tractors upon the public highways for agricultural purposes but such use [of "refund gasoline"] shall prohibit the refunding of the tax on the number of gallons of gasoline or special fuel so used.

C. EMMETT CALVERT, Secretary

APPROVED BY AGENCY: December 15, 1988

FILED WITH LRC: December 15, 1988 at noon

PUBLIC HEARING: A public hearing on this regulation shall be held on January 23, 1989 at 9:30 a.m. in Room 406 of the Capitol Annex, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by January 18, 1989, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Scott Akers, Revenue Cabinet, Division of Tax Policy and Legal Services, New Capitol Annex Building, Frankfort, Kentucky 40620.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Scott Akers

(1) Type and number of entities affected: The entities affected are the approximately 10,000 farmers who will be qualified to receive refunds of gasoline or special fuels tax or make tax-free purchases of special fuels pursuant to HB 591.

(a) Direct and indirect costs or savings to those affected: No change in costs or savings involving the gasoline tax. Farmers would otherwise be prohibited from using refund special fuels on the highways for agricultural purposes, e.g., using a tractor on the highway to go from one field to another. By allowing such use but denying refund on those gallons used while on the highways, the farmer's routine operations will not be interrupted.

1. First year: Same as (1)(a).

2. Continuing costs or savings: Same as (1)(a).

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional cost factors known. The only effect on competition would be to provide for equal treatment of all farmers who are refund permit holders and who must occasionally drive unlicensed farm equipment over the highways to conduct their normal farming activities.

(b) Reporting and paperwork requirements: The amount of fuel used on the highways in unlicensed farm equipment would be a line item deduction on any special fuels tax refund claim filed and it would be necessary for the farmer to keep records of the fuel so used.

(2) Effects on the promulgating administrative body: No change in Revenue Cabinet functions for agricultural gasoline. The line item deduction reported by qualifying farmers would have to be math checked. However, since any highway use in unlicensed farm equipment for agricultural purposes is extremely small in relation to nonhighway uses, only minimal effects on the cabinet are anticipated.

(a) Direct and indirect costs or savings: No change in costs involving the gasoline tax. Any additional cost involving the special fuels tax is expected to be so small as to be immeasurable.

1. First year: Same as (2)(a).

2. Continuing costs or savings: Same as (2)(a).

3. Additional factors increasing or decreasing costs: None known.

(b) Reporting and paperwork requirements: No change in Revenue Cabinet reporting and paperwork requirements.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: Amendment of this regulation became necessary due to statutory changes enacted through HB 591. There were no other alternatives available although the amendment affecting special fuels could have been promulgated in a separate regulation. Such an alternative was deemed to be inefficient.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: Not applicable.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

(6) Any additional information or comments: The amendments to this regulation will result

from statute changes enacted through HB 591.

TIERING: Was tiering applied? No. This regulation applies to all farmers qualified to receive refunds on fuels used for agricultural purposes. There is no statutory authority to provide preferential treatment on the basis of size or other criteria.

REVENUE CABINET

Department of Professional & Support Services
(Proposed Amendment)

103 KAR 43:120. Fuel for agricultural purposes [Prohibited uses].

RELATES TO: KRS 138.344 to 138.358 [138.343 to 138.357]

STATUTORY AUTHORITY: KRS Chapter 13A

NECESSITY AND FUNCTION: This regulation summarizes portions of the gasoline and special fuels tax statutes relating to tax [dealing with agricultural] refunds or credits on fuel used in stationary engines or tractors for agricultural purposes and lists specific examples of nonqualifying machinery and equipment [uses of refund gasoline that are prohibited].

Section 1. The tax paid on gasoline shall [will] not be refunded under the provisions of KRS 138.344 [138.343] to 138.357 and the tax paid on special fuels shall not be subject to the credit provided by KRS 138.358(2) unless the fuel is [gasoline was actually] used on a farm for operating or propelling stationary [gasoline] engines or tractors for agricultural purposes; such stationary engines and tractors must have been used for purposes directly related to the production of agricultural commodities or the conducting of ordinary activities on the farm.

Section 2. Activities connected with gardening, horticulture, apiculture, viticulture, dairying and poultry raising will ordinarily be considered as included in "agricultural purposes," provided such activities are an integral part of the farm; and provided that they are not conducted so as to become a business distinct from agriculture.

Section 3. The following are examples [are uses] of machinery and equipment which shall not qualify as stationary engines or tractors used for agricultural purposes [refund gasoline in stationary engines and tractors which are prohibited by KRS 138.344 and 138.354]:

- (1) Saw mill machinery [mills];
- (2) Well-drilling machinery;
- (3) Limestone crushing machinery;
- (4) Engines used for pumping oil;
- (5) Machinery in a commercial feed grinding mill to which grain is delivered; [and]
- [(6) Similar uses.]

[Section 4. The following are examples of uses of gasoline to operate machinery or equipment which are not included in the term "stationary gasoline engines or tractors for agricultural purposes" and in which the use of refund gasoline is prohibited by KRS 138.344 and 138.354:]

- [(6) [(1)] Bulldozers, power shovels, graders, and other construction equipment;
- [(7) [(2)] Trucks or other licensed motor

vehicles;

(8) [(3)] Power-takeoff equipment on trucks to operate feed crushers; and

(9) [(4)] Marine motors; and

[(5) Similar uses].

Section 4. [5.] No refund or credit pursuant to this regulation shall be authorized for any individual gasoline or special fuel purchase of less than fifty (50) gallons [Refund gasoline cannot be used for cooking, heating, cleaning and off or similar purposes].

C. EMMETT CALVERT, Secretary

APPROVED BY AGENCY: December 15, 1988

FILED WITH LRC: December 15, 1988 at noon

PUBLIC HEARING: A public hearing on this regulation shall be held on January 24, 1989 at 9 a.m. in Room 406 of the Capitol Annex, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by January 18, 1989, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Scott Akers, Revenue Cabinet, Division of Tax Policy and Legal Services, New Capitol Annex Building, Frankfort, Kentucky 40620.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Scott Akers

(1) Type and number of entities affected: The entities affected are the persons using special fuel for agricultural purposes. Under prior law, there were approximately 7,500 approved storage locations, of which an estimated 5,000 were for agricultural purposes. It is anticipated that the number of entities will be approximately 10,000 under the 1988 legislation when all persons eligible have filed applications for refund permits.

(a) Direct and indirect costs or savings to those affected: Those affected are required to apply for a refund permit. This is a one-time requirement which authorizes the entity to purchase special fuel tax free if used for approved agricultural purposes. If special fuel is used off-road but not for approved agricultural purposes, tax must be paid when fuel is purchased and recovered thru filing a refund request with the Revenue Cabinet. The requirements for agricultural gasoline refunds are not altered except to restrict the period for which refund claims may be filed.

1. First year: Entity must file application for refund permit in all cases. Refund claims must be filed only on off-road special fuels not used for agricultural purposes.

2. Continuing costs or savings: Quarterly or annual filing of refund claims are necessary to recover special fuels tax paid if all off-road special fuel is not used for agricultural

purposes.

3. Additional factors increasing or decreasing costs (note any effects upon competition): None known.

(b) Reporting and paperwork requirements: Requirements consist of a one-time application for a refund permit and quarterly filing of refund claims if all special fuel is not used for agricultural purposes but is used off road.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: Administrative costs of compliance with the 1988 legislative program are about the same as those under prior law. Initially, added costs will result from one time processing and approving refund permits and these are estimated at \$10,000. Similar costs were incurred in establishing the approved storage system under prior special fuels tax law. A new administrative cost will be that associated with authorizing refunds where entities use special fuel off road but not for agricultural purposes. These are estimated at \$25,000 per year.

1. First year: Initial costs associated with application for refund permits are estimated at \$10,000.

2. Continuing costs or savings: Continuing costs for authorizing refunds are estimated at \$25,000.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: See above.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: The current regulation - and several others - required amendment due to House Bill 591 from the 1988 Session.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None known.

(a) Necessity of proposed regulation if in conflict: No conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: No conflict.

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. This regulation applies to all entities which use special fuels for agricultural purposes. There is no statutory authority to provide preferential treatment on the basis of size or other criteria.

REVENUE CABINET

Department of Professional & Support Services
(Proposed Amendment)

103 KAR 43:130. Refund requirements
[Identification].

RELATES TO: KRS 138.226, 138.344 [138.348, 138.351]

STATUTORY AUTHORITY: KRS Chapter 13A

NECESSITY AND FUNCTION: This regulation summarizes the statutes and requires that purple dye be added to refund gasoline. Also, limits the issuance of refund invoices to Kentucky licensed dealers.

Section 1. The refund permit of all holders shall be conditioned upon their providing containers plainly marked with the statement [distinguishing letters] "refund motor fuel" or a comparable statement prescribed by the Revenue Cabinet. No motor fuel placed into such containers shall be used for any purpose except as provided in KRS 138.344. [gasoline.] All refund gasoline shall be dyed purple as required by the Revenue Cabinet and shall be stored only in such containers.

Section 2. All licensed Kentucky gasoline dealers or their authorized agents are hereby required to add upon the sale and delivery the identifier (purple dye) furnished by the Revenue Cabinet to refund gasoline sold by them to any holder of an unrevoked refund permit.

Section 3. The identifier is to be placed only in properly marked containers [plainly marked with distinguishing letters, "refund gasoline,"] before the filling of the container and a record thereof shall be made upon the [gasoline] refund invoice [of such addition by placing a check mark upon the invoice] in the space provided thereon.

Section 4. The [agricultural] refund invoices described in KRS 138.351 and the purple dye prescribed by the cabinet pursuant to KRS 138.348, which is used to identify [agricultural] refund motor fuel [gasoline], shall [will] be issued only to licensed [gasoline] dealers or their authorized agents.

Section 5. The Revenue Cabinet may, in writing, require any licensed Kentucky special fuels dealer or his authorized agents to identify special fuels in the same manner as required for gasoline pursuant to Sections 1 through 4 of this regulation.

Section 6. The Revenue Cabinet may, within its discretion, permit or require a Kentucky licensed gasoline or special fuels dealer to substitute approved refund invoices in lieu of the invoices provided by the cabinet pursuant to KRS 138.351.

Section 7. No refund invoice shall be issued by, and no credit pursuant to KRS 138.358(2) shall be authorized to, any Kentucky licensed dealer unless the motor fuel is delivered to the holder of a Kentucky motor fuels tax refund permit who claims to be entitled to tax refund on such fuel pursuant to KRS 138.344.

C. EMMETT CALVERT, Secretary

APPROVED BY AGENCY: December 15, 1988

FILED WITH LRC: December 15, 1988 at noon

PUBLIC HEARING: A public hearing on this regulation shall be held on January 24, 1989 at 10 a.m. in Room 406 of the Capitol Annex, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by January 19, 1989, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written

request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Scott Akers, Revenue Cabinet, Division of Tax Policy and Legal Services, New Capitol Annex Building, Frankfort, Kentucky 40620.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Scott Akers

(1) Type and number of entities affected: The entities affected are 350 licensed gasoline dealers and 450 licensed special fuels dealers as well as an estimated 20,000 to 25,000 persons who obtain refund permits for the purchase of nonhighway gasoline or special fuel.

(a) Direct and indirect costs or savings to those affected: No change in costs or savings involving agricultural gasoline which is already required to be identified with purple dye provided by the Revenue Cabinet. The same identification may be required by the Revenue Cabinet for nonhighway special fuels although the cabinet plans to impose such a requirement only when there is reason to believe a specific refund permit holder may be using the fuel in licensed vehicles on the highways. If such a requirement were imposed, the licensed dealer would simply add the appropriate dye when the fuel is placed in the purchaser's storage tank. Any cost to the dealer would be extremely small since it would take only seconds to place the dye into the storage tank before placing the fuel into the same tank. Refund permit holders are required, as under prior law applicable to refund gasoline, to mark nonhighway fuel storage tanks with special wording to reflect the intended nonhighway use of the fuel purchased.

1. First year: Same as (1)(a).

2. Continuing costs or savings: Same as (1)(a).

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional cost factors known. The only effect upon competition would be to help insure that no refund applicant could gain an advantage over another by using nonhighway fuel in licensed vehicles on the highways.

(b) Reporting and paperwork requirements: This regulation summarizes statutory provisions related to refund motor fuel and provides for an alternative to dealer issuance of normal refund invoices for refund motor fuel sold. If requested and approved, any alternatives to the refund invoice would reduce the selling dealer's need to manually generate a separate refund invoice document. No change in licensed dealer reporting requirements.

(2) Effects on the promulgating administrative body: No change in Revenue Cabinet functions for refund gasoline. The regulation does provide a means for additional special fuels compliance efforts since the cabinet may, if deemed necessary, require the addition of dye to special fuels in specific situations.

(a) Direct and indirect costs or savings: An extremely small additional cost to purchase purple dye could result if the cabinet were to require such dye for special fuels. However, since imposition of such a requirement is anticipated only as a compliance procedure in isolated instances, any cost involved would be

extremely small. If an alternative refund invoice is approved for a requesting dealer, some printing cost could be reduced slightly.

1. First year: Same as (2)(a).
2. Continuing costs or savings: Same as (2)(a).
3. Additional factors increasing or decreasing costs: None known.

(b) Reporting and paperwork requirements: No change in Revenue Cabinet reporting or paperwork requirements except to notify dealers in the event purple dye is to be required for special fuels sold to specific customers.

(3) Assessment of anticipated effect on state and local revenues: None. However, this regulation supports overall compliance for the gasoline and special fuels taxes and, to that extent, serves to protect those revenues from potential loss due to abuse by nonhighway fuel purchasers who might otherwise be tempted to use refund fuel on the highways on licensed vehicles.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Amendment of this regulation became necessary due to statute changes enacted through HB 591. There were no other alternatives available although the amendments affecting special fuels could have been promulgated in a separate regulation. Such an alternative was deemed to be inefficient.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: Not applicable.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

(6) Any additional information or comments: The amendments to this regulation result from statutory changes enacted through HB 591.

TIERING: Was tiering applied? No. This regulation applies to all licensed dealers and refund permit holders who sell or use nonhighway gasoline or special fuels. There is no statutory authority to provide preferential treatment on the basis of size or other criteria.

REVENUE CABINET

Department of Professional & Support Services
(Proposed Amendment)

103 KAR 43:140. Cancellation.

RELATES TO: KRS 138.226, 138.345

STATUTORY AUTHORITY: KRS Chapter 13A

NECESSITY AND FUNCTION: This regulation interprets KRS 138.345 and sets up procedure to cancel unused refund permits.

Section 1. Any unrevoked refund permit issued under the provisions of KRS 138.345, upon which no application has been filed with the Revenue Cabinet for refund of the Kentucky tax paid [on gasoline used for agricultural purposes] within the next preceding calendar year, shall be subject to cancellation by the cabinet.

Section 2. Notice of the intention of the cabinet to cancel the unused refund permit shall be made by advising the permittee through the regular United States Mail. If no protest by the permittee is received by the cabinet within thirty (30) days from the mailing date of the notice, such cancellation shall be made.

Section 3. Nothing in this [the above] regulation shall be so construed as to prohibit the reissuance of a new refund permit upon proper application by any person who has had a refund permit cancelled because of failure to apply for a refund during any calendar year.

C. EMMETT CALVERT, Secretary

APPROVED BY AGENCY: December 15, 1988

FILED WITH LRC: December 15, 1988 at noon

PUBLIC HEARING: A public hearing on this regulation shall be held on January 24, 1989 at 11 a.m. in Room 406 of the Capitol Annex, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by January 19, 1989, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Scott Akers, Revenue Cabinet, Division of Tax Policy and Legal Services, New Capitol Annex Building, Frankfort, Kentucky 40620.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Scott Akers

(1) Type and number of entities affected: The entities affected are the estimated 20,000 to 25,000 persons who obtain refund permits for the purchase of nonhighway gasoline or special fuels.

(a) Direct and indirect costs or savings to those affected: The only potential cost would be the postage on a letter from the refund permit holder responding to a cabinet notice of an intent to cancel the holder's refund permit.

1. First year: Same as (1)(a).

2. Continuing costs or savings: Same as (1)(a).

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional cost factors known. There would be no effect on competition.

(b) Reporting and paperwork requirements: To prevent cancellation of an unused refund permit, the permit holder would need to send a letter to the cabinet advising as to why the permit should not be cancelled.

(2) Effects on the promulgating administrative body: This regulation provides a means for the cabinet to periodically purge the file of permit holders who do not use their refund permits. To do otherwise would allow the file to grow over the years to the point where it no longer reflected those active nonhighway users of gasoline and special fuels.

(a) Direct and indirect costs or savings: At some point in the future, probably beginning in two to three years, the cabinet would review the refund permit file and contact those permit holders who did not appear to be still active. Postage costs would be incurred, but file maintenance costs would be reduced.

1. First year: None

2. Continuing costs or savings: Same as

(2)(a), probably beginning as an annual program in FY 1991-92.

3. Additional factors increasing or decreasing costs: None known.

(b) Reporting and paperwork requirements: Cancellation of inactive refund permits would reduce the filing space for inactive permit holders. Letters to inactive permit holders would be issued annually to purge the active files.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: Amendment of this regulation became necessary due to statutory changes enacted through HB 591. There were no alternatives available.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: Not applicable.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

(6) Any additional information or comments: The amendments to this regulation result from statute changes enacted through HB 591.

TIERING: Was tiering applied? No. This regulation applies to all refund permit holders who do not use their refund permits. There is no statutory authority to provide preferential treatment on the basis of size or other criteria.

REVENUE CABINET

Department of Professional & Support Services
(Proposed Amendment)

103 KAR 43:230. Tax refunds; watercraft [motor boats].

RELATES TO: KRS 138.445

STATUTORY AUTHORITY: KRS Chapter 13A

NECESSITY AND FUNCTION: This regulation summarizes the statute dealing with watercraft [motorboat gasoline] tax refunds and prescribes [outlines cabinet] requirements for refund claims. [Necessary to allow small users the refund provided by law.]

Section 1. When gasoline or special fuel on which the tax has been paid pursuant to the provisions of KRS 138.210 to 138.340 is purchased for the purpose of dispensing it directly into the fuel tanks installed in or attached to watercraft [motor boats], ninety (90) percent of such tax shall be refunded to the purchaser thereof upon presenting to the cabinet an application made under oath, accompanied by copies of invoices from a licensed [gasoline] dealer or his duly authorized subjobber showing the purchase of such fuel [gasoline] and the billing for the motor fuel [gasoline] tax thereon.

Section 2. No person shall be qualified to receive a refund under this regulation unless the Revenue Cabinet has approved the dispensing facility [such location] and there has been filed with the cabinet an application and a bond. The bond must be issued by a corporate surety authorized to do business in this state, in the amount of \$1,000, and conditioned upon the repayment to the Commonwealth of Kentucky of

any refunds to which the person was not entitled. Only locations situated at public boat docks or at other dispensing facilities which float upon the water may [will] be approved.

Section 3. If storage facilities of approved locations are above ground tanks, such tanks must be identified by placing thereon in letters of at least two (2) inches in height, and in a color in contrast to that of the storage facility, the words "refund motor fuel" or comparable words prescribed by the Revenue Cabinet. [not for highway use."] The dispensing facilities of either above ground or underground storage must have placed thereon in letters of at least two (2) inches in height the same words.

Section 4. All claims for refunds described in [authorized by] this regulation shall be filed with the cabinet quarterly within thirty (30) days after the end of the calendar quarter or within ninety (90) days after the close of the calendar year. [Claims must be postmarked on or before the last day of the next succeeding calendar month following the quarterly period to which they relate.]

Section 5. No refund shall be granted upon gasoline or special fuel received by any person [subject to refund under this regulation which is delivered] into storage facilities [of any person] prior to approval of such storage facilities by the Revenue Cabinet [pursuant to the requirement of Section 3 of this regulation].

Section 6. The cabinet may require any dealer or dealer's authorized agent to identify gasoline or special fuel, subject to refund under this regulation, sold by him, by adding thereto any chemical or substance, which shall be furnished by the cabinet and used in the manner as prescribed by the cabinet.

Section 7. Agents of the cabinet are authorized to go upon the premises of any person applying for approval under this regulation to make inspections to ascertain any matter connected with the enforcement of this regulation. If gasoline or special fuel subject to refund under this regulation is found being used for any purposes other than in watercraft [motor boats], it shall be a prima facie violation of this regulation and no refund shall thereafter be granted to, or on behalf of, any person approved to receive refunds at that location at the time the violation occurred.

[Section 8. The refund allowable under this regulation must be passed on to the user of the fuel to which it relates. The operator of the dock, which has been approved under this regulation, must have posted on the dispensing facilities the state tax of nine-tenths (.9) cent per gallon and must actually charge the user at that rate.]

C. EMMETT CALVERT, Secretary

APPROVED BY AGENCY: December 15, 1988

FILED WITH LRC: December 15, 1988 at noon

PUBLIC HEARING: A public hearing on this regulation shall be held on January 23, 1989 at 9 a.m. in Room 406 of the Capitol Annex, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by January 18, 1989, five days prior

to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Scott Akers, Revenue Cabinet, Division of Tax Policy and Legal Services, New Capitol Annex Building, Frankfort, Kentucky 40620.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Scott Akers

(1) Type and number of entities affected: The entities affected are the 115 public boat docks which have qualified to receive refund of 90% of the tax paid on gasoline or special fuel sold for use in watercraft.

(a) Direct and indirect costs or savings to those affected: No change in costs or savings involving the gasoline tax except that refund claims may be filed either quarterly or annually instead of just quarterly. Docks selling special fuels will, pursuant to HB 591, have to pay the special fuels tax to the licensed dealer and then apply for quarterly or annual refund. However, any such refund claim would be combined with claims for gasoline tax refund. While some costs will be associated with the application for refund, it is anticipated that such costs will be extremely small. An undetermined, but probably small, cost will result from boat docks not having use of the tax they pay until they receive a refund.

1. First year: Same as (1)(a).

2. Continuing costs or savings: Same as (1)(a).

3. Additional factors increasing or decreasing costs (note any effects on competition): There are no additional cost factors known. The only effect upon competition would be to provide for equal treatment of all boat docks selling gasoline and special fuels for use in watercraft.

(b) Reporting and paperwork requirements: Refund claimants must make quarterly or annual refund applications and attach invoices for the fuel purchased.

(2) Effects on the promulgating administrative body: The number of qualified boat docks are not expected to change. Since refund claims are to be filed quarterly or annually rather than just quarterly, the number of claims may decrease slightly.

(a) Direct and indirect costs or savings: No change or a slight decrease in costs to process gasoline tax refund claims if the dock elects to file annually instead of quarterly. Possible marginal increase in costs for those claims which include special fuels tax.

1. First year: Same as (2)(a).

2. Continuing costs or savings: Same as (2)(a).

3. Additional factors increasing or decreasing costs: None known.

(b) Reporting and paperwork requirements: No change in cabinet reporting and paperwork requirements is anticipated.

(3) Assessment of anticipated effect on state

and local revenues: Possible marginal increase in special fuels tax collections resulting from the "float" which would arise between the time the tax is paid to the cabinet and the time at which refunds are issued. Local revenues would increase slightly to the extent they share in state Road Fund revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Amendment of this regulation became necessary due to statutory changes enacted through HB 591. There were no other alternatives available although the amendment affecting the special fuels tax could have been promulgated in a separate regulation. Such an alternative was deemed to be inefficient.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: Not applicable.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

(6) Any additional information or comments: The amendments to this regulation result from statutory changes enacted through HB 591.

TIERING: Was tiering applied? No. This regulation applies to all qualified public boat docks. There is no statutory authority to provide preferential treatment on the basis of size or other criteria.

GENERAL GOVERNMENT CABINET

Board of Hairdressers and Cosmetologists
(Proposed Amendment)

201 KAR 12:065. Inspection of new, relocated and change of owner salons.

RELATES TO: KRS 317A.050, 317A.060

STATUTORY AUTHORITY: KRS 317A.060

NECESSITY AND FUNCTION: Any business seeking licensing by this board must meet various city, county and state zoning laws, building and plumbing codes, as well as inspection by board personnel. This board does not issue a dual license for barber shops and beauty salons.

Section 1. All new beauty salons and all beauty salons moving to a new location must complete an application furnished by the board.

Section 2. All new beauty salons, all beauty salons moving to a new location, and all beauty salons changing owners shall notify the board five (5) days before opening for business of the new location, date on which the salon is to be opened for business and name of the owner and/or manager of the salon.

Section 3. All new beauty salons and all beauty salons moving to a new location shall be inspected by an inspector employed by the board before issuance of license. No salon shall open for business prior to issuance of a salon license.

Section 4. All new beauty salons and all beauty salons moving to a new location must comply with all city, county, and state zoning, building and plumbing laws, regulations and codes.

Section 5. (1) Except as provided by subsection (2) of this section, all beauty salons shall be separated from all barber shops by a soundproof partition extending to the ceiling and each facility shall have its own individual entrance.

(2) The provisions of subsection (1) of this section do not apply to a nursing home if it:

(a) Has obtained a salon license from the board; and

(b) The practice of barbering does not occur at the same time as the practice of cosmetology.

(3) If the provisions of subsection (2) of this section have been met, a cosmetologist may engage in the practice of cosmetology on the premises of a nursing home in the same facility established by the nursing home for the practice of barbering.

Section 6. Any salon located in a residence shall have an outside entrance.

CARROLL ROBERTS, Administrator

APPROVED BY AGENCY: December 5, 1988

FILED WITH LRC: December 14, 1988 at 11 a.m.

PUBLIC HEARING: A public hearing has been scheduled on January 23, 1989 at 3 p.m. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Carroll Roberts, Administrator, 314 West Second Street, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Carroll Roberts

(1) Type and number of entities affected: Salons in nursing homes - 20.

(a) Direct and indirect costs or savings to those affected:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: None

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: No additional.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication:

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied? Yes. Under the current administrative regulations governing hairdressers and barbers the residents of many nursing homes would be without services of hairdressers and barbers because only one room is available for the provisions of these services. It would be too great an expense for many nursing homes to construct separate

facilities for the services. In order not to deprive the residents of nursing homes of these services, this amendment providing an exemption for nursing homes is necessary.

GENERAL GOVERNMENT CABINET Kentucky Board of Nursing (Proposed Amendment)

201 KAR 20:330. Standards for curriculum of prelicensure practical nurse programs.

RELATES TO: KRS 314.011(9), 314.111(1), 314.131(1)

STATUTORY AUTHORITY: KRS Chapter 314

NECESSITY AND FUNCTION: To assure that an educational program will meet standards and provide the necessary education for licensure as a practical nurse. Such standards shall reflect the philosophy, purpose, objectives, and conceptual or organizing framework of the program of nursing which shall be consistent with the law governing the practice of nursing.

Section 1. Curriculum Leading to Eligibility for Licensure as a Practical Nurse. (1) One type of program prepares graduates for eligibility to be admitted to the licensure examination for practical nurses.

(2) "Practical nursing program" means a program of nursing organized and administered by a vocational, technical and adult education system or an independent school at a postsecondary level, which awards the graduate a diploma in practical nursing upon meeting requirements of the program.

(3) Approval.

(a) No curriculum plan shall be implemented unless approved by the board.

(b) A curriculum plan shall include supporting evidence that students will be able to acquire basic nursing skills essential for safe practice upon graduation.

(4) Length. The program of nursing shall be a [maximum of one (1) year and] a minimum of nine (9) months.

(5) The philosophy and objectives of the program of nursing shall be clearly defined in writing by the nursing faculty and be consistent with those of the governing institution.

(6) The program of nursing objectives shall describe the expected competencies of the graduate.

(7) There shall be a written plan describing the organizational framework and development of the curriculum.

(8) The curriculum shall reflect the philosophy and objectives of the program.

(9) The curriculum plan shall show the placement of courses according to term and level, and the relationship of course content to the clinical practice experience.

(10) A copy of each course outline, including objectives, planned instruction, learning activities, and methods of evaluation shall be on file in the program office.

(11) The amount of time allotted to class content and clinical practice shall be identified.

(12) The curriculum shall include:

(a) Subject matter from the biological and social sciences: human body structure and function, growth and development, and normal nutrition.

(b) Area of personal and vocational relationships.

(c) Area of nursing content.

1. Curriculum shall address content with selected clinical practice experience in meeting basic nursing needs throughout the life cycle.

2. Clinical practice settings shall be appropriate for the practical nurse program and the program objectives.

3. Written plans for clinical practice experience shall be submitted to the board for approval before implementation.

(13) Curriculum change. Any change in the curriculum shall be submitted to the board for approval before implementation.

SHARON M. WEISENBECK, Executive Director

APPROVED BY AGENCY: November 6, 1988

FILED WITH LRC: December 6, 1988 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation will be held on January 25, 1989 at 10 a.m. in Room 420 of the Professional Towers Building, 4010 Dupont Circle, Louisville, Kentucky. Those interested in attending this hearing shall notify the following office in writing by January 20, 1989: Sharon M. Weisenbeck, Kentucky Board of Nursing, 4010 Dupont Circle, Suite 430, Louisville, Kentucky 40207.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Sharon M. Weisenbeck

(1) Type and number of entities affected:

(a) Direct and indirect costs or savings to those affected:

1. First year: There are no Kentucky practical nursing programs which exceed one year in length, so the proposed amendment will have no effect on Kentucky educated applicants for practical nurse licensure. However, there are some PN programs in other states which exceed one year in duration, and each year there are a small number of applications (fewer than 10) for licensure by endorsement which require special handling because of the one year limitation currently appearing in the regulation. While these persons are generally granted licensure by endorsement after a special review, neither the burden on the agency nor the delay to the applicant would appear to be warranted by any concern for public protection. Therefore, the board proposes to delete the one year limitation on PN programs.

2. Continuing costs or savings: Same as for first year.

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: Will eliminate need for special review of a small number of applications for licensure by endorsement.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Will eliminate need for special review of a small number of applications for licensure by endorsement.

2. Continuing costs or savings: Same as above.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons

why alternatives were rejected: The alternative was to maintain the status quo. That was rejected since the language which the board proposes to delete does not appear to serve any public protection purpose.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: N/A

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A

(6) Any additional information or comments: No TIERING: Was tiering applied? Yes. Regulation applies only to applications for licensure as a practical nurse (LPN).

GENERAL GOVERNMENT CABINET Board of Examiners of Psychologists (Proposed Amendment)

201 KAR 26:160. Fee schedule for applications for licensure as a psychologist, certification as a psychologist, certification as psychologist with autonomous functioning and certification as psychological associate [assistant].

RELATES TO: KRS 319.050, 319.058, 319.062, 319.064

STATUTORY AUTHORITY: KRS 319.032

NECESSITY AND FUNCTION: To establish [provide] a fee schedule for licensure as a psychologist, certification as a psychologist, certification as a psychologist with autonomous functioning, [and] certification as a psychological associate [assistant] pursuant to applicable statutes, to authorize the board to refund fees under certain conditions, and to establish a fee schedule for reexaminations.

Section 1. (1) The fee for application for licensure as a psychologist shall be \$200.

(2) The application fee for certification as a certified psychologist shall be \$200.

(3) The fee for application for certification as a certified psychologist with autonomous functioning shall be as follows:

(a) \$100 if the applicant has passed the Examination for Professional Practice in Psychology given by the board at one (1) standard deviation below the mean;

(b) \$200 if the applicant has not passed the Examination for Professional Practice in Psychology at one (1) standard deviation below the mean.

(4) The fee for application for certification as a psychological associate [assistant] shall be \$200.

(5) Every three (3) years license and certificate holders shall pay to the board a renewal fee of \$100 and shall receive a renewal license or certificate.

Section 2. (1) If the applicant fails the examination for professional practice in psychology and applies to retake this examination, the fee shall be \$140.

(2) If the applicant fails the structured oral examination and applies to retake this examination, the fee shall be fifty (50) dollars.

(3) An application for licensure or certification by reciprocity must be accompanied by a fee of \$100.

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Section 3. (1) The board may refund \$100 of the \$200 application fee if the application has been approved, but is withdrawn prior to the applicant taking the examination for professional practice in psychology.

(2) The board may refund \$100 of the \$200 application fee if the application to sit for this examination is denied.

DAVID NICHOLAS, Director

APPROVED BY AGENCY: December 15, 1988

FILED WITH LRC: December 15, 1988 at noon

PUBLIC HEARING: A public hearing has been scheduled concerning this regulation on January 30, 1989, at 10 a.m. at the Capitol Annex, Room 107, Frankfort, Kentucky. Anyone interested in attending this hearing shall notify in writing: Rudy A. Bisciotti, The Capitol Building, Frankfort, Kentucky 40601, at least 5 days before the hearing.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Rudy A. Bisciotti

(1) Type and number of entities affected: Board of Examiners of Psychologists and applicants for licensure or certification.

(a) Direct and indirect costs or savings to those affected: Applicants will realize a minimal cost of \$140 to retake an examination and a minimal savings of \$100 if he/she applies but withdraws prior to taking the examination.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: No additional reporting or paperwork will be necessary.

(2) Effects on the promulgating administrative body: None

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: No additional reporting or paperwork will be necessary.

(3) Assessment of anticipated effect on state and local revenues: No anticipated effect on state and/or local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Not applicable - no alternative appropriate.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None known.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. No disproportionate impact on any certain class or classes of regulated entities; no over-regulation problem encountered through this regulation or amendments thereto.

GENERAL GOVERNMENT CABINET Board of Examiners of Psychologists (Proposed Amendment)

201 KAR 26:171. Requirements for supervision of certified psychologists, psychological associates [assistants], and candidates for licensure.

RELATES TO: KRS 319.050, 319.058, 319.064

STATUTORY AUTHORITY: KRS 319.032

NECESSITY AND FUNCTION: KRS 319.032 requires regulations governing the supervision of certified psychologists, psychological associates [assistants], and candidates for licensure. This regulation defines the requirements for such supervision.

Section 1. Certified Psychologists. (1) Approval of supervision. With the exception of those certified psychologists granted autonomous functioning pursuant to KRS 319.062, no certified psychologist may perform functions within the practice of psychology unless supervised by a licensed psychologist under conditions and arrangements approved by the board. The certified psychologist and the proposed supervisor must apply to the board, in writing, for approval of the supervision.

(2) Direct supervision. One (1) hour of individual face-to-face supervision on a weekly basis is required for the first two (2) years following certification. Thereafter, the supervisory arrangement may be modified upon petition to and approval by the board.

(3) Reports of supervision. The supervisor must submit a written report on an annual basis for the first five (5) years following certification which describes the functioning of the certified psychologist. Thereafter, the supervisor may request approval by the board to submit reports once every two (2) years. The reports should include a description of functions, frequency of supervision, strengths, weaknesses, and any other information which may be relevant to an adequate assessment of the functioning of the certified psychologist.

(4) Responsibilities of the supervisor. The licensed psychologist may not supervise a total of more than six (6) applicants for licensure, certified psychologists, or psychological associates [assistants] at one (1) time. The supervisor must provide reports of supervision to the board in a timely manner. The supervisor is required to inform the board of any change in the ability to supervise or the ability of the certified psychologist to function.

(5) Responsibilities of the certified psychologist. The certified psychologist is responsible for keeping the supervisor adequately informed at all times and for seeking supervision as needed in addition to regularly scheduled supervisory sessions. The certified psychologist is responsible for checking to see that reports of supervision have been sent to the board in a timely manner.

(6) Identification of provider. The actual deliverer of services must be identified to the client and on all billings for services rendered indicating services performed by the certified psychologist and supervised by the licensed psychologist.

Section 2. Psychological Associates [Assistants]. (1) Approval of supervision. No

psychological associate [assistant] may perform functions within the practice of psychology unless supervised by a licensed psychologist under conditions and arrangements approved by the board. The psychological associate [assistant] and the proposed supervisor must apply to the board, in writing, for approval of the supervision.

(2) Direct supervision. One (1) hour of individual face-to-face supervision on a weekly basis is required.

(3) Reports of supervision. The supervisor must submit a written report on an annual basis which describes the functioning of the psychological associate [assistant]. The reports should include a description of functions, frequency of supervision, strengths, weaknesses, and any other information which may be relevant to an adequate assessment of the functioning of the psychological associate [assistant].

(4) Responsibilities of the supervisor. The licensed psychologist may not supervise a total of more than six (6) applicants for licensure, certified psychologists, or psychological associates [assistants] at one (1) time. The supervisor must provide reports of supervision to the board in a timely manner. The supervisor is required to inform the board of any change in the ability to supervise or the ability of the psychological associate [assistant] to function.

(5) Responsibilities of the psychological associate [assistant]. The psychological associate [assistant] is responsible for keeping the supervisor adequately informed at all times and for seeking supervision as needed in addition to regularly scheduled supervisory sessions. The psychological associate [assistant] is responsible for checking to see that reports of supervision have been sent to the board in a timely manner.

(6) Identification of provider. The actual deliverer of services must be identified to the client and on all billings for services rendered, indicating services performed by the psychological associate and supervised by the licensed psychologist. Formal evaluation reports shall be signed by both the psychological associate and the supervising licensed psychologist.

Section 3. Candidates for Licensure. (1) Approval of supervision. No candidate for licensure may practice psychology unless supervised by a licensed psychologist under conditions and arrangements approved by the board. An applicant for licensure whose application and supervision have been approved by the board, may apply to the board for permission to practice psychology under the supervision of a licensed psychologist until the results of the next regularly scheduled examination for licensure are known.

(2) Direct supervision. One (1) hour of individual face-to-face supervision on a weekly basis is required until the candidate passes all examinations for the granting of licensure.

(3) Reports of supervision. The supervisor must submit a minimum of one (1) written report describing the skills of the candidate. The board may request additional reports if needed to assess the candidate's functioning. The reports should include a description of the function, frequency of supervision, strengths, weaknesses, and any other information which may be relevant to an adequate assessment of the

practice of the candidate. This report must be submitted prior to the date of the next regularly scheduled examination for licensure.

(4) Responsibilities of the supervisor. The licensed psychologist may not supervise a total of more than six (6) applicants for licensure, certified psychologists, or psychological associates [assistants] at one (1) time. The supervisor must provide reports of supervision to the board in a timely manner. The supervisor is required to inform the board of any change in the ability to supervise or the ability of the candidate for licensure to function.

(5) Responsibilities of the candidate for licensure. The candidate for licensure is responsible for keeping the supervisor adequately informed at all times and for seeking supervision as needed in addition to regularly scheduled supervisory sessions. The candidate for licensure is responsible for checking to see that reports of supervision have been sent to the board in a timely manner.

(6) Termination of supervisory relationship of candidates for licensure. Following successful completion of the licensure requirements, the supervisory relationship will no longer be required.

DAVID NICHOLAS, Director

APPROVED BY AGENCY: December 15, 1988

FILED WITH LRC: December 15, 1988 at noon

PUBLIC HEARING: A public hearing has been scheduled concerning this regulation on January 30, 1989, at 10 a.m. at the Capitol Annex, Room 107, Frankfort, Kentucky. Anyone interested in attending this hearing shall notify in writing: Rudy A. Bisciotti, The Capitol Building, Frankfort, Kentucky 40601, at least 5 days before the hearing.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Rudy A. Bisciotti

(1) Type and number of entities affected: Board of Examiners of Psychologists, certified psychologists, psychological associates.

(a) Direct and indirect costs or savings to those affected: None

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: No additional reporting or paperwork will be necessary.

(2) Effects on the promulgating administrative body: None

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: No anticipated effect on state and/or local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Not applicable - no alternative appropriate.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to

harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: The proposed amendments will provide the client along with his/her bill, with a summary of the deliverer and description of service rendered.

TIERING: Was tiering applied? Yes.

**GENERAL GOVERNMENT CABINET
Board of Examiners of Psychologists
(Proposed Amendment)**

201 KAR 26:190. Requirements for supervised professional experience.

RELATES TO: KRS 319.050

STATUTORY AUTHORITY: KRS 319.032

NECESSITY AND FUNCTION: Certain terms are used in the statute regulating the requirements for supervised professional experience. This regulation defines those terms.

Section 1. Those applying for licensure must complete one (1) year of supervised professional experience defined as 2,000 hours with at least 100 [fifty (50)] hours of supervisory sessions distributed over the year. The supervisor must be licensed and must be approved by the board.

Section 2. For purposes of this regulation, the designation "health service provider" shall be made on the license of those psychologists who perform activities which include the delivery or supervision of direct health-care services to individuals or groups of individuals who are the intended beneficiaries of such services.

Section 3. No one who does not have the designation "health service provider" may provide or supervise direct health-care services. Those persons applying for licensure in the specialty areas of clinical, counseling, or school psychology shall have the designation "health service provider."

Section 4. Those persons applying for licensure with the designation "health service provider," excluding those applying in the specialty area of school psychology, must complete one (1) year of supervised professional experience defined as follows:

(1) The experience occurs within an organized training program, in contrast to supervised experience or on-the-job training and has a planned, programmed sequence of training experiences.

(2) The training program, typically called an internship, has a clearly designated staff psychologist who is responsible for the integrity and quality of the training program and who is actively licensed by the Board of Examiners in Psychology.

(3) The internship agency has two (2) or more psychologists on the staff as supervisors, at least one (1) of whom is actively licensed as a psychologist by the Board of Examiners in Psychology.

(4) Internship supervision is provided by a staff member of the internship agency or by an affiliate of that agency who carried clinical responsibility for the cases being supervised. At least half of the internship supervision is provided by one (1) or more psychologists with

an appropriate doctorate degree.

(5) The internship provides training in a range of assessment and treatment activities conducted directly with clients seeking psychological services.

(6) At least twenty-five (25) percent of the trainee's time is in direct client contact (minimum 375 hours).

(7) The internship includes a minimum of two (2) hours per week of regularly scheduled, formal, face-to-face individual supervision. There must also be at least two (2) additional hours per week in learning activities such as case conferences, seminars dealing with clinical issues, group supervision.

(8) Training is postclerkship, postpracticum and postexternship level.

(9) The internship has a written statement or brochure which describes the goals and content of the internship, stated clear expectations for quality and quantity of trainee's work and which is made available to prospective interns.

(10) The internship experience (minimum 2000 hours) is completed within twenty-four (24) months.

Section 5. Those persons applying for licensure with the designation "health service provider" in the specialty area of school psychology, shall have completed one (1) year of supervised professional experience defined as follows:

(1) The experience occurs within an organized training program which provides a sequence of experiences, including practical and field experiences.

(2) The training program, typically called an internship, provides training in a range of assessment and intervention activities conducted with and for children and youth needing school psychological services.

(3) The internship agency has a clearly designated staff member who is responsible for the integrity and quality of the internship program, but who does not necessarily provide the supervision.

(4) Internship supervision is provided by a professional psychologist who is currently licensed by State/Provincial Board of Examiners in Psychology. The supervisor is a staff member of the internship agency or an affiliate of that unit who carried responsibility for cases being supervised, and when necessary, can change procedures and techniques for the intern and provide input to the agency staff. The affiliate may be provided by the school (agency), the intern, or the sending graduate program. When internship supervision is provided by an affiliate of that agency, a regular member of the agency staff must be responsible for providing administrative review.

(5) The internship includes an average of at least two (2) hours per week of regularly scheduled, formal, face-to-face individual supervision with the specific intent of dealing with school psychological services rendered directly by the intern. The mentor must provide an average of one (1) hour a week of supervision but may delegate other supervision to appropriate members of the psychological service unit.

(6) In addition to individual supervision there is an additional average of at least two (2) hours per week in scheduled learning activities such as: case conferences involving a

case in which the intern is actively involved, seminars dealing with professional issues, in-service training. These activities may be in conjunction with professionals other than school psychologists.

(7) Supervision and education will account for at least ten (10) percent (150 hours) of the intern's time. Some of the activities may occur at times other than the "regular" work day.

(8) The total internship experience may occur in more than one (1) setting but must include a minimum of 1500 hours and must be completed within twenty-four (24) months.

(9) At least twenty-five (25) percent (375 hours) of the trainee's time is in direct client contact.

(10) The intern may spend up to twenty-five (25) percent (375 hours) of the time in research activity.

(11) The intern shall have scheduled and unscheduled opportunities to interact with interns, school psychologists, and/or other psychologists. It is desirable for the internship agency to have two (2) or more such persons on the staff, but small agencies may meet this criterion by planning meetings with appropriate personnel in the area.

(12) The intern shall have the opportunity to interact professionally with persons from other disciplines and other agencies.

(13) The trainee has a title such as "intern," "resident," "fellow," or other designation of trainee status.

(14) The internship agency, preparing institution, and intern have a written agreement that describes the goals and content of the internship including clearly stated expectations for the nature of experiences offered in the agency and for the quantity and quality of the work.

Section 6. For psychologists licensed in the specialty areas of clinical, counseling, or school psychology prior to the adoption of this regulation, the board shall issue a stamp designating "health service provider" at the regular renewal time of each license. The designating seal may be obtained at an earlier date by paying a fee of ten (10) dollars to the state board.

Section 7. Applicants wishing to obtain the designation "health service provider" whose license was granted prior to the adoption of this regulation, in specialty areas other than clinical, counseling, or school psychology may apply for a review of their record by the board as to whether their supervised experience meets the criteria specified by the board. A nonrefundable fee of fifty (50) dollars must accompany the application for review.

DAVID NICHOLAS, Director

APPROVED BY AGENCY: December 15, 1988

FILED WITH LRC: December 15, 1988 at noon

PUBLIC HEARING: A public hearing has been scheduled concerning this regulation on January 30, 1989, at 10 a.m. at the Capitol Annex, Room 107, Frankfort, Kentucky. Anyone interested in attending this hearing shall notify in writing: Rudy A. Bisciotti, The Capitol Building, Frankfort, Kentucky 40601, at least 5 days before the hearing.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Rudy A. Bisciotti

(1) Type and number of entities affected: Applicants for licensure.

(a) Direct and indirect costs or savings to those affected: None

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body: None

(a) Direct and indirect costs or savings: None

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: No anticipated effect on state and/or local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Not applicable - no alternative appropriate.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied? Yes.

GENERAL GOVERNMENT CABINET Board of Examiners of Psychologists (Proposed Amendment)

201 KAR 26:200. Definitions of terms used by the Board of Examiners of Psychologists for meeting educational requirements for licensure as a licensed psychologist.

RELATES TO: KRS 319.050

STATUTORY AUTHORITY: KRS 319.032

NECESSITY AND FUNCTION: Certain terms are used in the statute regulating educational requirements for psychologists. This regulation defines those terms as they relate to licensed psychologists.

Section 1. In order to qualify as a licensed psychologist, the following requirements shall be met.

Section 2. A doctoral degree in psychology means:

(1) A doctoral degree from a recognized institution of higher learning as defined above; and

(2) The program, wherever it may be administratively housed, is clearly identified by the granting institution as a psychology program. Such a program must specify in pertinent institutional catalogues and brochures its intent to educate and train professional psychologists; and

(3) Any dissertation required for the degree is psychological in method and content and an expected product of doctoral training in psychology; and

(4) The program stands as a recognizable, coherent, organized entity within the institution; and

(5) Within the psychology faculty there is clear authority and primary responsibility for the core and specialty areas whether or not the program cuts across administrative lines; and

(6) The program is an integrated, organized sequence of study; and

(7) There is an identifiable psychology faculty and a psychologist responsible for the program; and

(8) The program has an identifiable body of students who are matriculated in that program for a degree; and

(9) In areas of clinical, counseling, and school psychology the program includes educational experiences with titles such as practicum, internship or field training.

(10) In determining the acceptability of curricular experiences and course work, the following factors shall be considered:

(a) The curriculum shall encompass a minimum of three (3) academic years of full-time graduate study.

(b) In addition to instruction in scientific and professional ethics and standards, research design and methodology, statistics and psychometrics, the core program shall require each student to demonstrate competence in each of the following content areas. This typically will be met by including a minimum of three (3) or more graduate semester hours (five (5) or more graduate quarter hours) in each of these four (4) areas:

1. Biological bases of behavior, such as physiological psychology, comparative psychology, neuropsychology, sensation and perception, psychopharmacology.

2. Cognitive-affective bases of behavior, such as learning, thinking, motivation, emotion.

3. Social bases of behavior, such as social psychology, group process, organizational psychology and systems.

4. Individual differences, such as personality theory, human development, abnormal psychology.

(c) In addition to the core program, the curriculum shall include appropriate coursework as determined by the board in the specialty area of training including specific training and diagnosis and assessment of individual/organizational differences and the design and implementation of appropriate intervention techniques, e.g., psychotherapy, counseling, consultation, etc.

(11) The applicant shall provide any documentation required by the board ~~in the manner and form prescribed by the board~~ to confirm compliance with or satisfaction of the requirements of this law.

(12) At the discretion of the board, [With the approval of the board,] any deficiency in course work or other requirements may be corrected by appropriate remedial work, [with additional or alternative course work or experience that meets the educational or experience requirements.]

Section 3. A regionally accredited educational institution means accreditation by any one (1) of the following: Southern Association of Colleges and Schools, Middle States Association of Colleges and Schools, New England Association of Colleges and Schools, North Central Association of Colleges and Schools, North Western Association of Schools and Colleges, and

Western Association of Schools and Colleges.

Section 4. Accreditation means accreditation by one (1) of the aforementioned associations at Level 4 (doctoral degree granting accreditation) or at Level 5 (graduate or professional degree granting accreditation).

DAVID NICHOLAS, Director

APPROVED BY AGENCY: December 15, 1988

FILED WITH LRC: December 15, 1988 at noon

PUBLIC HEARING: A public hearing has been scheduled concerning this regulation on January 30, 1989, at 10 a.m. at the Capitol Annex, Room 107, Frankfort, Kentucky. Anyone interested in attending this hearing shall notify in writing: Rudy A. Bisciotti, The Capitol Building, Frankfort, Kentucky 40601, at least 5 days before the hearing.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Rudy A. Bisciotti

(1) Type and number of entities affected: Board of Examiners of Psychologists, applicants for licensure.

(a) Direct and indirect costs or savings to those affected: None

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body: None

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: No anticipated effect on state and/or local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Not applicable - no alternative appropriate.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied? No. No disproportionate impact on any certain class or classes of regulated entities; no over-regulation problem encountered through amendments to this regulation.

GENERAL GOVERNMENT CABINET

Board of Examiners of Psychologists
(Proposed Amendment)

201 KAR 26:210. Definitions of terms used by the Board of Examiners of Psychology for meeting educational requirements for certification as a psychological associate [assistant].

RELATES TO: KRS 319.064

STATUTORY AUTHORITY: KRS 319.032

NECESSITY AND FUNCTION: Certain terms are used

in the statute regulating educational requirements for psychologists. This regulation defines those terms as they relate to psychological associates [assistants].

Section 1. In order to qualify as a psychological associate [assistant], the following requirements shall be met.

Section 2. A master's degree in psychology means:

(1) A master's degree from a recognized institution of higher learning as defined above; and

(2) The program, wherever it may be administratively housed, is clearly identified by the granting institution as a psychology program. Such a program must specify in pertinent institutional catalogues and brochures its intent to educate and train professional psychologists; and

(3) Any thesis required for the degree is psychological in method and content and an expected product of master's training in psychology; and

(4) The program stands as a recognizable, coherent, organized entity within the institution; and

(5) Within the psychology faculty there is clear authority and primary responsibility for the core and specialty areas whether or not the program cuts across administrative lines; and

(6) The program is an integrated, organized sequence of study; and

(7) There is an identifiable psychology faculty and a psychologist responsible for the program; and

(8) The program has an identifiable body of students who are matriculated in that program for a degree; and

(9) The program includes educational experiences with titles such as practicum, internship or field training. This accumulated experience must be supervised by a doctoral-level psychologist and must equal 600 hours.

(10) In determining the acceptability of curricular experiences and course work, the following factors shall be considered:

(a) The curriculum shall encompass a minimum of forty-five (45) semester hours of graduate study.

(b) In addition to instruction in scientific and professional ethics and standards, research design and methodology, statistics and psychometrics, the core program shall require each student to demonstrate competence in each of the following content areas. This typically will be met by including a minimum of three (3) or more graduate semester hours (five (5) or more graduate quarter hours) in each of these four (4) areas:

1. Biological bases of behavior, such as physiological psychology, comparative psychology, neuropsychology, sensation and perception, psychopharmacology.

2. Cognitive-affective bases of behavior, such as learning, thinking, motivation, emotion.

3. Social bases of behavior, such as social psychology, group process, organizational psychology and systems.

4. Individual differences, such as personality theory, human development, abnormal psychology.

(c) In addition to the core program, the curriculum shall include appropriate course work

as determined by the board in the specialty area of training including specific training in diagnosis and assessment of individual/organizational differences and the design and implementation of appropriate intervention technique, e.g. psychotherapy, counseling, consultation, etc.

(11) The applicant shall provide any documentation required by the board in the manner and form prescribed by the board to confirm compliance with or satisfaction of the requirements of this law.

(12) At the discretion of the board. [With the approval of the board,] any deficiency in course work or other requirements may be corrected by appropriate remedial work. [with additional or alternative course work or experience that meets the educational or experience requirements.]

Section 3. A regionally accredited educational institution means accreditation by any one (1) of the following: Southern Association of Colleges and Schools, Middle States Association of Colleges and Schools, New England Association of Colleges and Schools, North Central Association of Colleges and Schools, North Western Association of Schools and Colleges, and Western Association of Schools and Colleges.

Section 4. Accreditation means accreditation by one (1) of the aforementioned associations at Level 3 (master's degree granting accreditation).

DAVID NICHOLAS, Director

APPROVED BY AGENCY: December 15, 1988

FILED WITH LRC: December 15, 1988 at noon

PUBLIC HEARING: A public hearing has been scheduled concerning this regulation on January 30, 1989, at 10 a.m. at the Capitol Annex, Room 107, Frankfort, Kentucky. Anyone interested in attending this hearing shall notify in writing: Rudy A. Bisciotti, The Capitol Building, Frankfort, Kentucky 40601, at least 5 days before the hearing.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Rudy A. Bisciotti

(1) Type and number of entities affected: Board of Examiners of Psychologists, applicants for certification.

(a) Direct and indirect costs or savings to those affected: None

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body: None

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: No anticipated effect on state and/or local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Not applicable - no alternative appropriate.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied? No. No disproportionate impact on any certain class of regulated entities; no over-regulation problem encountered through the amendments to this regulation.

**GENERAL GOVERNMENT CABINET
Board of Examiners of Psychologists
(Proposed Amendment)**

201 KAR 26:230. Examinations.

RELATES TO: KRS 319.050, 319.058, 319.064

STATUTORY AUTHORITY: KRS 319.032

NECESSITY AND FUNCTION: KRS 319.032 requires regulations governing the examination of applicants for licensure and certification. This regulation outlines requirements concerning examinations.

Section 1. General Requirements. (1) The board will publish pertinent instructions and establish the examination schedule which will include: the place, the time, and the final date by which the board must have received the applicant's materials.

(2) An applicant for examination must submit a complete application and pay the required fee to the board in a timely manner. Once the application has been approved by the board, an applicant will be scheduled to take the examination at the next regularly scheduled date.

(3) If an applicant fails to appear for the scheduled examination and presents a valid reason in writing for missing the examination, such as illness or death in the immediate family, the examination may be deferred until the next scheduled date without forfeiture of the examination fee.

(4) If an applicant fails to appear for or to complete the examination without a valid reason, the applicant will forfeit all fees paid.

(5) If an applicant fails to appear for a second scheduled examination without presenting a valid reason in writing such as illness or death in the immediate family, the application will be terminated on the date of the examination, and the applicant will be denied licensure/certification on the basis of failure of the examination by default. The applicant may not practice psychology or use the title "psychologist."

Section 2. Examination for Licensure. (1) An applicant for licensure who has been approved to sit for the examination and whose supervisory arrangement has been approved by the board will be considered to be functioning under a temporary license until the results of the next regularly scheduled examination are known.

(2) If an applicant for licensure fails the examination, the board may, upon the development of a remediation plan acceptable to the board, reissue the temporary license to function under supervision until the results of the next examination are known. Under no circumstances can a temporary license be renewed by the board more than two (2) times.

(3) If an applicant for licensure fails to appear for the scheduled examination and presents a valid reason in writing for missing the examination, such as illness or death in the immediate family, the examination may be deferred until the next scheduled date without forfeiture of the examination fee and with the approved application still constituting a temporary license to function under supervision.

(4) If an applicant for licensure fails to appear for or to complete the examination without a valid reason, the applicant will forfeit all fees paid. Moreover, the approved application will no longer constitute a temporary license and the applicant for licensure may not practice psychology, or use the title "psychologist."

(5) An applicant for licensure shall submit to an examination composed of the Examination for Professional Practice in Psychology developed by the Professional Examination Service and owned by the American Association of State Psychology Boards. The applicant must obtain a score equal to or greater than one (1) standard deviation below the national mean score for all doctoral candidates.

(6) An applicant for licensure shall submit to a structured oral examination administered by two (2) [three (3)] licensed psychologists [at least] one (1) of whom is a member of the board and one (1) of whom is licensed in the candidate's specialty area. This examination will cover ethical principles, professional practice in the candidate's specialty area and Kentucky Mental Health Law. Each examiner will independently rate the applicant's performance. The applicant must demonstrate an acceptable level of knowledge of each of the three (3) areas in order to pass the examination. Both [A majority of the] examiners must rate the applicant as having passed in order for the applicant to have passed. If the applicant fails the oral examination, [oral examination is failed,] the applicant may reapply with a remediation plan. Upon completion of the remediation plan approved by the board, the applicant will be examined by a second team composed in the same manner as the first team.

(7) If the person who has been admitted to the examination for licensure but who failed to pass the examination wishes to apply for certification, a completed application for certification and the appropriate fee, if required, must be submitted with the proposed area of competency and supervision indicated. The board will accept the applicant's previous examination results if the original test scores of each portion required satisfies the certification requirements as to criteria level and area of competency.

Section 3. Examination for Certification as a Certified Psychologist. (1) An applicant for certification as a certified psychologist who has been approved to sit for the examination and whose supervisory arrangement has been approved by the board will be considered to be functioning under a temporary certificate until the results of the next regularly scheduled examination are known. [shall submit to an examination composed of the Examination for Professional Practice in Psychology developed by the Professional Examination Service and owned by the American Association of State Psychology Boards. The applicant must obtain a score equal

to or greater than one (1) standard deviation below the national mean score for all nondoctoral candidates.]

(2) If an applicant for certification fails the examination, the board may, upon the development of a remediation plan acceptable to the board, reissue the temporary certificate to function under supervision until the results of the next regularly scheduled examination are known. Under no circumstances can a temporary certificate be renewed by the board more than two (2) times.

(3) If an applicant for certification fails to appear for the scheduled examination and presents a valid reason in writing for missing the examination, such as illness or death in the immediate family, the examination may be deferred until the next scheduled date without forfeiture of the examination fee and with the approved application still constituting a temporary certificate to function under supervision.

(4) If an applicant for certification fails to appear for or to complete the examination without a valid reason, the applicant will forfeit all fees paid. Moreover, the approved application will no longer constitute a temporary certificate and the applicant for certification may not practice psychology, or use the title "psychologist."

(5) An applicant for certification as a certified psychologist shall submit to an examination composed of the Examination for Professional Practice in Psychology developed by the Professional Examination Service and owned by the American Association of State Psychology Boards. The applicant must obtain a score equal to or greater than one (1) standard deviation below the national mean score for all doctoral candidates.

(6) An applicant for certification as a certified psychologist shall submit to a structured oral examination administered by two (2) [three (3)] psychologists [at least] one (1) of whom is a [member of the board and two (2) of whom are] certified psychologist or certified psychological associate, and [assistants. At least] one (1) of whom [examiner] must be credentialed [certified] in the candidate's specialty area. This examination will cover ethical principles, professional practice in the candidate's specialty area, and Kentucky Mental Health Law. Each examiner will independently rate the applicant's performance. The applicant must demonstrate an acceptable level of knowledge of each of the three (3) areas in order to pass the examination. Both [A majority of the] examiners must rate the applicant as having passed in order for the applicant to have passed. If the applicant fails the oral examination, [oral examination is failed,] the applicant may reapply with a remediation plan. Upon completion of the remediation plan approved by the board, the applicant will be examined by a second team composed in the same manner as the first team.

Section 4. Examination for Certification as a Psychological Associate [Assistant]. (1) An applicant for certification as a psychological associate who has been approved to sit for examination and whose supervisory arrangement has been approved by the board will be considered to be functioning under a temporary certificate until the results of the next

regularly scheduled examination are known.

(2) If an applicant for certification fails the examination, the board may, upon the development of a remediation plan acceptable to the board, reissue the temporary certificate to function under supervision until the results of the next regularly scheduled examination are known. Under no circumstances can a temporary certificate be renewed by the board more than two (2) times.

(3) If an applicant for certification fails to appear for the scheduled examination and presents a valid reason in writing for missing the examination, such as illness or death in the immediate family, the examination may be deferred until the next scheduled date without forfeiture of the examination fee and with the approved application still constituting a temporary certificate to function under supervision.

(4) If an applicant for certification fails to appear for or to complete the examination without a valid reason, the applicant will forfeit all fees paid. Moreover, the approved application will no longer constitute a temporary certificate and the applicant for certification may not practice psychology, or use the title "psychologist."

(5) An applicant for certification as a certified psychologist shall submit to an examination composed of the Examination for Professional Practice in Psychology developed by the Professional Examination Service and owned by the American Association of State Psychology Boards. The applicant must obtain a score equal to or greater than one (1) standard deviation below the national mean score for all nondoctoral candidates. [assistant shall submit to an examination composed of the Examination for Professional Practice in Psychology developed by the Professional Examination Service and owned by the American Association of State Psychology Boards. The applicant must obtain a score equal to or greater than one (1) standard deviation below the national mean score for all nondoctoral candidates.]

DAVID NICHOLAS, Director

APPROVED BY AGENCY: December 15, 1988

FILED WITH LRC: December 15, 1988 at noon

PUBLIC HEARING: A public hearing has been scheduled concerning this regulation on January 30, 1989, at 10 a.m. at the Capitol Annex, Room 107, Frankfort, Kentucky. Anyone interested in attending this hearing shall notify in writing: Rudy A. Bisciotti, The Capitol Building, Frankfort, Kentucky 40601, at least 5 days before the hearing.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Rudy A. Bisciotti

(1) Type and number of entities affected: Board of Examiners of Psychologists, applicants for licensure and certification.

(a) Direct and indirect costs or savings to those affected: None

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body: None

(a) Direct and indirect costs or savings:

1. First year:
 2. Continuing costs or savings:
 3. Additional factors increasing or decreasing costs:
 - (b) Reporting and paperwork requirements: None
 - (3) Assessment of anticipated effect on state and local revenues: No anticipated effect on state and/or local revenues.
 - (4) Assessment of alternative methods; reasons why alternatives were rejected: Not applicable - no alternative appropriate.
 - (5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None known.
 - (a) Necessity of proposed regulation if in conflict:
 - (b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
 - (6) Any additional information or comments:
- TIERING: Was tiering applied? Yes.

CORRECTIONS CABINET
(Proposed Amendment)

501 KAR 6:020. Corrections policies and procedures.

RELATES TO: KRS Chapters 196, 197, 439
STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640

NECESSITY AND FUNCTION: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorize the secretary to adopt, amend or rescind regulations necessary and suitable for the proper administration of the cabinet or any division therein. These regulations are in conformity with those provisions.

Section 1. Pursuant to the authority vested in the Corrections Cabinet the following policies and procedures are incorporated by reference on December 15 [September 13], 1988 and hereinafter should be referred to as Corrections Policies and Procedures. Copies of the procedures may be obtained from the Office of the General Counsel, Corrections Cabinet, State Office Building, Frankfort, Kentucky 40601.

- | | | | |
|------|--|-------|--|
| 1.1 | Legal Assistance for Corrections Staff | 6.1 | Open Records Law |
| 1.2 | News Media [(Amended 9/13/88)] | 7.2 | Asbestos Abatement |
| 1.4 | The operation of Contracted Adult Correctional Facilities | 8.4 | Emergency Preparedness |
| 1.6 | Extraordinary Occurrence Reports | 9.1 | Use of Force |
| 1.9 | Institutional Duty Officer | 9.3 | Transportation of Convicted Offenders |
| 1.11 | Population Counts and Reporting Procedures | 9.4 | Transportation of Inmates to Funerals or Bedside Visits |
| 1.12 | Operation of Motor Vehicles by Corrections Cabinet Employees | 9.6 | Contraband |
| 2.1 | Inmate Canteen | 9.7 | Storage, Issue and Use of Weapons Including Chemical Agents |
| 2.2 | Warden's Fund | 9.8 | Search Policy |
| 2.10 | Surplus Property | 9.9 | Transportation of Inmates |
| 3.1 | Code of Ethics | 9.10 | Security Inspections |
| 3.2 | Inclement Weather and Emergency Conditions Policy | 9.11 | Tool Control |
| 3.3 | Holding of Second Jobs by Bureau Employees | 9.15 | Institutional Entry and Exit Policy and Procedures |
| 3.10 | Staff Clothing and Personal Appearance | 9.18 | Informants |
| 3.12 | Institutional Staff Housing | 9.19 | Found Lost or Abandoned Property |
| 3.14 | Corrections Cabinet Payroll Deduction Policy and Procedure | 10.2 | Special Management Inmates |
| 4.1 | Attendance at Professional Meetings | 10.3 | Safekeepers |
| 4.2 | Staff Training and Development | 10.4 | Special Needs Inmates |
| 4.3 | Firearms and Chemical Agents Training | 11.2 | Nutritional Adequacy of the Diet for Inmates |
| 4.4 | Educational Assistance Program | 11.3 | Special Diet Procedures |
| | | 13.1 | Pharmacy Policy and Formulary |
| | | 13.2 | Health Maintenance Services |
| | | 13.3 | Medical Alert System |
| | | 13.4 | Health Program Audits |
| | | 13.5 | Acquired Immune Deficiency Syndrome |
| | | 13.6 | <u>Sex Offender Treatment Program (Added 12/15/88)</u> |
| | | 14.2 | Personal Hygiene Items |
| | | 14.3 | Marriage of Inmates |
| | | 14.4 | Legal Services Program |
| | | 14.6 | Inmate Grievance Procedures |
| | | 15.1 | Hair and Grooming Standards |
| | | 15.2 | Offenses and Penalties |
| | | 15.3 | Meritorious Good Time |
| | | 15.5 | Restoration of Forfeited Good Time |
| | | 15.6 | Adjustment Procedures and Programs |
| | | 16.1 | General Inmate Visiting Procedure |
| | | 16.2 | Inmate Correspondence |
| | | 16.3 | Telephone Calls |
| | | 16.4 | Inmate Packages |
| | | 17.1 | Inmate Personal Property |
| | | 17.2 | Assessment Center Operations |
| | | 17.3 | Controlled Intake of Inmates |
| | | 18.4 | Classification of the Inmate |
| | | 18.5 | Custody/Security Guidelines (Amended 12/15/88) |
| | | 18.6 | Classification Document (Amended 12/15/88) |
| | | 18.7 | Transfers |
| | | 18.8 | Guidelines for Transfers Between Institutions (Amended 12/15/88) |
| | | 18.9 | Out-of-State Transfers |
| | | 18.10 | Parole Progress Reports |
| | | 18.11 | Kentucky Correctional Psychiatric Center Transfer Procedures |
| | | 18.12 | Referral Procedure for Inmates Adjudicated Guilty But Mentally Ill |
| | | 18.13 | Population Categories |
| | | 18.15 | Protective Custody |
| | | 19.1 | Government Services Projects |
| | | 19.2 | Community Services Projects |
| | | 20.1 | Study Release |
| | | 20.6 | Vocational Study Release |
| | | 22.1 | Privilege Trips |
| | | 25.1 | Gratuities |
| | | 25.2 | Public Official Notification of Release of an Inmate |
| | | 25.3 | Prerelease |
| | | 25.4 | Inmate Furloughs |
| | | 25.6 | Community Center Program |
| | | 25.7 | Expedient Release |
| | | 25.8 | Extended Furloughs |

27-01-01 Probation and Parole Procedures
 27-02-01 Duties of Probation and Parole Officers
 27-03-01 Workload Formula Supervisor/Staff Ratio
 27-05-01 Testimony, Court Demeanor and Availability of Legal Services
 27-06-01 Availability of Supervision Services
 27-06-02 Equal Access to Services
 27-07-01 Cooperation with Law Enforcement Agencies
 27-09-01 Kentucky Community Resources Directory
 27-10-01 Advanced Supervision
 27-11-01 Intensive Supervision
 27-12-01 Supervision: Case Classification
 27-12-02 Risk/Needs Assessment
 27-12-03 Initial Interview
 27-12-04 Conditions of Regular Supervision/Request for Modification
 27-12-05 Releasee's Report
 27-12-06 Grievance Procedures for Offenders
 27-12-07 Employment, Education/Vocational Referral
 27-12-08 Supervision Plan
 27-12-09 Casebook
 27-12-10 Guidelines for Monitoring Supervision Fee
 27-12-11 Guidelines for Monitoring Financial Obligations Ordered by the Releasing Authority
 27-12-12 Other Financial Obligations (Not Ordered by Releasing Authority)
 27-12-13 Community Service Work
 27-12-14 Client Travel Restrictions
 27-13-02 Alcohol Detection
 27-14-01 Interstate Compact Transfers
 27-14-02 Interstate Compact Out-of-state Probation and Parole Violation
 27-15-01 Supervision Report; Violations, Unusual Incidents
 27-17-01 Absconder Procedures
 27-18-01 Probation and Parole Issuance of Detainer/Warrant
 27-19-01 Preliminary Revocation Hearing
 27-20-01 Division of Probation and Parole Controlled Intake Program
 27-20-02 Prisoner Intake Notification
 27-20-03 Prisoner Status Change
 27-21-01 Apprehension and Transportation of Probation and Parole Violators
 27-22-01 Fugitive Unit - Apprehensions
 27-22-02 Fugitive Unit - Transportation of Fugitives
 27-23-01 In-state Transfer
 27-24-01 Closing Supervision Report
 27-24-02 Reinstatement of Clients to Active Supervision
 27-25-01 Application for Final Discharge from Parole
 27-26-01 Assistance to Former Clients and Dischargees
 27-27-01 Restoration of Civil Rights
 27-28-01 Firearms/Explosives: Application for Relief from Disability
 27-29-01 Parole Review Dates Modification
 28-01-01 Probation and Parole Investigation Reports (Introduction, Definitions, Confidentiality, Timing, and General Comments)
 28-01-02 Probation and Parole Investigation Reports (Administrative Responsibilities)
 28-01-03 Probation and Parole Investigation Reports (Presentence/Postsentence Investigation Interview Procedure)

28-01-04 Probation and Parole Investigation Reports (Presentence/Postsentence Verification, Composition, Case Material and Submission Schedules)
 28-01-05 Probation and Parole Investigation Reports (Computation of Jail Custody Credit)
 28-01-06 Probation and Parole Investigation Reports (Misdemeanant Presentence Investigation Reports for the Circuit and District Courts)
 28-01-07 Probation and Parole Investigation Reports (Supplemental Postsentence Investigation Report, Case Material, and Submission Schedule)
 28-01-08 Probation Parole Investigation Reports (Partial Investigation Reports and Submission Schedule)
 28-01-09 Release of Information of Factual Content on Presentence/Postsentence Investigation Reports
 28-02-01 Expedient Release Program
 28-03-01 Parole Plans/Halfway Houses/Extended Furlough/Sponsorship/Gradual Release
 28-04-01 Furlough Verifications
 28-05-01 Out-of-state Investigations

JOHN T. WIGGINTON, Secretary

APPROVED BY AGENCY: December 15, 1988

FILED WITH LRC: December 15, 1988 at 10 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for January 23, 1989 at 9 a.m., in the State Office Building Auditorium. Those interested in attending this hearing shall notify in writing: Barbara Jones, Office of General Counsel, 5th Floor, State Office Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Barbara Jones

(1) Type and number of entities affected: 2304 employees of the Corrections Cabinet, 7104 inmates, 10,981 parolees and probationers, and all visitors to state correctional institutions.

(a) Direct and indirect costs or savings to those affected:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None - All of the costs involved with the implementation of the regulations are included in the operational budget.

2. Continuing costs or savings: Same as 2(a)1.

3. Additional factors increasing or decreasing costs: Same as 2(a)1.

(b) Reporting and paperwork requirements: Monthly submission of policy revisions.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: None

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation

with conflicting provisions:

(6) Any additional information or comments:
None

TIERING: Was tiering applied? No. All policies are administered in a uniform manner.

CORRECTIONS CABINET
(Proposed Amendment)

501 KAR 6:030. Kentucky State Reformatory.

RELATES TO: KRS Chapters 196, 197, 439

STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640

NECESSITY AND FUNCTION: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorize the secretary to adopt, amend or rescind regulations necessary and suitable for the proper administration of the cabinet or any division therein. These regulations are in conformity with those provisions.

Section 1. Pursuant to the authority vested in the Corrections Cabinet the following policies and procedures are incorporated by reference on December [November] 15, 1988 and hereinafter should be referred to as Kentucky State Reformatory Policies and Procedures. Copies of the procedures may be obtained from the Office of the General Counsel, Corrections Cabinet, State Office Building, Frankfort, Kentucky 40601.

KSR 01-00-09 Public Information and News Media Relations
KSR 01-00-10 Entry Authorization for All Cameras and Tape Recorders Brought into the Institution
KSR 01-00-14 Extraordinary Occurrence Report
KSR 01-00-15 Cooperation and Coordination with Oldham County Court
KSR 01-00-19 Personal Service Contract Personnel
KSR 01-00-20 Consent Decree Notification to Inmates
KSR 02-00-01 Inmate Canteen
KSR 02-00-03 Screening Disbursements from Inmate Personal Accounts
KSR 02-00-11 Inmate Personal Accounts (Amended 12/15/88)
KSR 02-00-12 Institutional Funds and Issuance of Checks
KSR 03-00-01 Shift Assignment/Reassignment
KSR 03-00-02 Employee Dress and Personal Appearance
KSR 03-00-05 Intra-Agency Promotional Opportunity Announcements
KSR 03-00-07 Travel Expense Reimbursement
KSR 03-00-08 Employee Tuition Assistance Reimbursement
KSR 03-00-10 Workers' Compensation
KSR 03-00-14 Prohibited Employee Conduct, Disciplinary Actions, and Appeal Process
KSR 03-00-15 Affirmative Action Program
KSR 03-00-16 Confidentiality of Personnel Records
KSR 03-00-19 Establishment of Personnel Records and Employee Right to Challenge Information Contained Therein
KSR 03-00-20 Personnel Selection, Retention and Promotion
KSR 03-00-21 Equal Employment Opportunities for Institutional Job Assignments and Job Classification Promotions

KSR 03-00-24 Inclement Weather and Employee Work Attendance
KSR 03-00-25 Medical Examination Requirements for New Employees
KSR 04-00-02 Staff Training and Development
KSR 05-00-01 Officers' Daily Housing Security and Safety Log
KSR 05-00-02 Research Activities
KSR 05-00-03 Management Information Systems
KSR 06-00-01 Inmate Master File
KSR 06-00-02 Records Audit
KSR 06-00-03 Kentucky Open Records Law and Release of Psychological/Psychiatric Information
KSR 07-00-02 Institutional Tower Room Regulations
KSR 07-00-04 Handling of PCB Articles and Containers
KSR 07-00-05 Proper Removal of Transformers
KSR 07-00-06 Asbestos Abatement
KSR 08-00-07 Inmate Family Emergency - Life Threatening Illness or Death in Inmate's Immediate Family
KSR 08-00-08 Death of an Inmate/Notification of Inmate Family in Case of Serious Injury, Critical Medical Emergency, Major Surgery
KSR 08-00-09 Emergency Preparedness Training
KSR 08-00-10 Hazardous Chemicals and Material Safety Data Sheet
KSR 09-00-04 Horizontal Gates/Box 1 Entry and Exit Procedure
KSR 09-00-05 Gate I Entrance and Exit Procedure
KSR 09-00-09 Contraband, Dangerous Contraband and Search Policy
KSR 09-00-14 Use of Force
KSR 09-00-21 Crime Scene Camera
KSR 09-00-22 Collection, Preservation, and Identification of Physical Evidence
KSR 09-00-23 Drug Abuse Testing
KSR 09-00-25 Inmate Motor Vehicle Operator's License
KSR 09-00-26 Contraband Outside Institutional Perimeter
KSR 09-00-27 Construction Crew Entry/Exit
KSR 09-00-28 Restricted Areas
KSR 10-00-01 Unit D - Staffing Pattern, Staff Allocation, Position Description, Staff Selection, Training and Evaluation, Time and Attendance, and Unit Personnel Records [(Amended 11/15/88)]
KSR 10-00-02 Unit D - General Operational Procedures
KSR 10-00-03 Unit D - Inmate Tracking System and Records System
KSR 10-00-04 Unit D - Administrative Segregation
KSR 10-00-05 Unit D - Disciplinary Segregation
KSR 10-00-06 Unit D - Protective Custody
KSR 10-00-07 Unit D - Geriatrics
KSR 10-00-08 Unit D - Safekeepers
KSR 10-00-09 Unit D - Hold Ticket Residents
KSR 10-00-10 Unit D - Inmate Legal Access
KSR 10-00-11 Unit D - Behavior Problem Control
KSR 10-00-12 Unit D - Designated Staff Visits
KSR 10-00-13 Unit D - Property Room Access
KSR 11-00-01 Meal Planning for the General Population [(Amended 11/15/88)]
KSR 11-00-02 Special Diets
KSR 11-00-03 Food Service Inspections
KSR 11-00-04 Dining Room Dress Code for Inmates
KSR 11-00-06 Health Standards/Regulations for Food Service Employees
KSR 11-00-07 Early Chow Line Passes for Medically Designated Inmates

KSR 12-00-01 Inmate Summer Dress Regulations
 KSR 12-00-02 Sanitation and General Living Conditions
 KSR 12-00-03 State Items Issued to Inmates
 KSR 12-00-07 Regulations for Inmate Barbershop
 KSR 13-00-01 Identification of Mentally Retarded Inmates [(Amended 11/15/88)]
 KSR 13-00-02 Hospital Operations, Rules and Regulations
 KSR 13-00-03 Medication for Inmates Leaving Institution Grounds
 KSR 13-00-04 Dental Care for Inmates
 KSR 13-00-05 Medical and Dental Sick Call
 KSR 13-00-06 Infection Control
 KSR 13-00-07 Referral of Inmates Considered to Have Severe Emotional Disturbances
 KSR 13-00-08 Institutional Laboratory Procedures
 KSR 13-00-09 Institutional Pharmacy Procedures
 KSR 13-00-10 Requirements for Medical Personnel
 KSR 13-00-11 Preliminary Health Evaluation and Establishment of Inmate Medical Record
 KSR 13-00-12 Vision Care/Optomety Services
 KSR 13-00-14 Periodic Health Examinations for Inmates
 KSR 13-00-15 Medical Alert System
 KSR 13-00-16 Suicide Prevention and Intervention Program
 KSR 14-00-01 Inmate Rights
 KSR 14-00-02 A/C Center and Unit D Inmate Access to Legal Aide Services
 KSR 14-00-04 Inmate Grievance Procedure
 KSR 14-00-05 Inmate Marriages
 KSR 14-00-06 Inmate Legal Aides
 KSR 15-00-01 Operational Procedures and Rules and Regulations for Unit A, B, and C
 KSR 15-00-02 Regulations Prohibiting Inmate Control or Authority Over Other Inmate(s)
 KSR 15-00-04 Restoration of Forfeited Good Time
 KSR 15-00-05 Differential Status for SU (QUIT) Inmates
 KSR 15-00-06 Inmate I.D. Cards
 KSR 15-00-07 Inmate Rules and Discipline - Adjustment Committee Procedures
 KSR 15-00-08 Firehouse Living Area
 KSR 16-00-01 Visiting Regulations
 KSR 16-00-02 Inmate Correspondence and Mailroom Operations (Amended 12/15/88)
 KSR 16-00-03 Inmate Access to Telephones
 KSR 17-00-01 Housing Unit Assignment - Assessment/Classification Center
 KSR 17-00-03 Notifying Inmates' Families of Admission and Procedures for Mail and Visiting
 KSR 17-00-04 Assessment/Classification Center Operations, Rules and Regulations
 KSR 17-00-05 Dormitory 10 Operations [(Amended 11/15/88)]
 KSR 17-00-06 Identification Department Admission and Discharge Procedures [(Amended 11/15/88)]
 KSR 17-00-07 Inmate Personal Property [(Amended 11/15/88)]
 KSR 18-00-04 Returns from Other Institutions
 KSR 18-00-05 Transfer of Residents to Kentucky Correctional Psychiatric Center, and Referral Procedure for Residents Adjudicated Guilty but Mentally Ill (Amended 12/15/88)
 KSR 18-00-06 Classification and Special Notice Form (Amended 12/15/88)

[KSR 18-00-07 Special Notice Form (Deleted 12/15/88)]
 KSR 19-00-01 Inmate Work Incentives
 KSR 19-00-02 On-the-job Training Program
 KSR 19-00-03 Safety Inspections of Inmate Work Assignment Locations
 KSR 20-00-01 Vocational School Referral and Release Process
 KSR 20-00-03 Academic School Programs
 KSR 20-00-04 Criteria for Participation in Jefferson Community College Program
 KSR 20-00-08 Integration of Vocational and Academic Education Programs
 KSR 21-00-01 Legal Aide Office and Law Library Services and Supervision
 KSR 21-00-02 Inmate Library Services
 KSR 21-00-03 Library Services for Unit D
 KSR 22-00-03 Inmate Organizations
 KSR 22-00-07 Inmate News Magazine
 KSR 23-00-02 Chaplain's Responsibility and Inmate Access to Religious Representatives
 KSR 23-00-03 Religious Programming
 KSR 25-00-01 Discharge of Residents to Hospital or Nursing Home
 KSR 25-00-02 Violations of Law or Code of Conduct by Inmates on Parole Furlough
 KSR 25-00-03 Preparole Progress Report

JOHN T. WIGGINTON, Secretary

APPROVED BY AGENCY: December 15, 1988

FILED WITH LRC: December 15, 1988 at 10 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for January 23, 1989 at 9 a.m., in the State Office Building Auditorium. Those interested in attending this hearing shall notify in writing: Barbara Jones, Office of General Counsel, 5th Floor, State Office Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Barbara Jones

(1) Type and number of entities affected: 551 employees of the Kentucky State Reformatory, 1451 inmates, and all visitors to state correctional institutions.

(a) Direct and indirect costs or savings to those affected:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None - All of the costs involved with the implementation of the regulations are included in the operational budget.

2. Continuing costs or savings: Same as 2(a)1.

3. Additional factors increasing or decreasing costs: Same as 2(a)1.

(b) Reporting and paperwork requirements: Monthly submission of policy revisions.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: None

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in

conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. All policies are administered in a uniform manner.

**CORRECTIONS CABINET
(Proposed Amendment)**

501 KAR 6:040. Kentucky State Penitentiary.

RELATES TO: KRS Chapters 196, 197, 439

STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640

NECESSITY AND FUNCTION: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorize the secretary to adopt, amend or rescind regulations necessary and suitable for the proper administration of the cabinet or any division therein. These regulations are in conformity with those provisions.

Section 1. Pursuant to the authority vested in the Corrections Cabinet the following policies and procedures are incorporated by reference on December 15 [November 15], 1988 and hereinafter should be referred to as Kentucky State Penitentiary Policies and Procedures. Copies of the procedures may be obtained from the Office of the General Counsel, Corrections Cabinet, State Office Building, Frankfort, Kentucky 40601.

KSP 000000-06	Administrative Regulations	KSP 050000-14	Searches and Preservation of Evidence
KSP 010000-04	Public Information and Media Communication	KSP 060000-01	Special Security Unit
KSP 020000-01	General Guidelines for KSP Employees	KSP 060000-02	Operational Procedures for Disciplinary Segregation, Administrative Segregation, Administrative Control and Behavioral Control Units
KSP 020000-02	Service Regulations, Attendance, Hours of Work, Accumulation and Use of Leave	KSP 060000-04	Protective Custody Unit
KSP 020000-03	Work Planning and Performance Review (WPPR)	KSP 060000-11	Criteria for Disciplinary Segregation and Incentive Time Reduction Program
KSP 020000-04	Employee Disciplinary Procedure	KSP 070000-01	Hospital Services
KSP 020000-05	Proper Dress for Uniformed and NonUniformed Personnel	KSP 070000-02	Sick Call
KSP 020000-06	Employee Grievance Procedure	KSP 070000-03	Health Evaluations
KSP 020000-07	Personnel Registers and Advertisements	KSP 070000-04	Consultations
KSP 020000-09	Maintenance, Confidentiality, and Informational Challenge of Material Contained in Personnel Files	KSP 070000-05	Emergency Medical Procedure
KSP 020000-10	Overtime Policy	KSP 070000-13	Pharmacy Procedures
KSP 020000-15	Legal Assistance	KSP 070000-14	Medical Records
KSP 020000-20	Equal Employment Opportunity Complaints	KSP 070000-16	Psychiatric and Psychological Services
KSP 020000-23	Recruitment and Employment of Ex-Offenders	KSP 070000-17	Dental Services for Special Management Units
KSP 020000-24	Educational Assistance Program	KSP 070000-19	Optometric Services
KSP 020000-29	Promotional Opportunity Announcement Program	KSP 070000-20	Menu Preparation and Planning
KSP 030000-01	Inventory Records and Control	KSP 070000-24	Food Service, General Sanitation, Safety, and Protection Standards and Requirements
KSP 030000-04	Requisition and Purchase of Supplies and Equipment	KSP 070000-25	Food Service Inspections
KSP 030000-05	Inmate Personal Funds	KSP 070000-30	Therapeutic Diets
KSP 030000-06	Inmate Commissary Program	KSP 090000-01	Inmate Work Programs
KSP 040000-01	Management Information System	KSP 090000-03	Correctional Industries (<u>Amended 12/15/88</u>)
KSP 040000-02	Inmate Records [(Amended 11/15/88)]	KSP 100000-02	Visiting Program
KSP 040000-08	Inmate Equal Opportunity Policy	KSP 100000-03	Disposition of Unauthorized Property
		KSP 100000-04	Inmate Grooming and Dress Code
		KSP 100000-05	Procedures for Providing Clothing, Linens and Other Personal Items
		KSP 100000-06	Inmate Mail and Packages
		KSP 100000-07	Inmate Telephone Access
		KSP 100000-08	Behavioral Counseling Record
		KSP 100000-09	Due Process/Disciplinary Procedures
		KSP 100000-11	Authorized and Unauthorized Inmate Property
		KSP 100000-14	Property Room: Clothing Storage and Inventory
		KSP 100000-15	Uniform Cell Standards for Fire Safety, Sanitation and Security
		KSP 100000-18	Inmate Grievance Committee Hearings
		KSP 100000-20	Legal Services Program
		KSP 100000-21	Photocopies for NonIndigent Inmates with Special Court Deadlines
		KSP 110000-04	Parole Progress Report (<u>Amended 12/15/88</u>)
		KSP 110000-06	General Guidelines of the Classification Committee
		KSP 110000-07	Statutory Good Time Restoration
		KSP 110000-08	Award of Meritorious Good Time
		KSP 110000-10	Special Needs Inmates
		[KSP 110000-11]	Classification Committee - Transfer Requests (Deleted 12/15/88)]
		KSP 110000-12	Unit Classification Committee - Inmate Work Assignments (<u>Amended 12/15/88</u>)
		KSP 110000-13	Classification Document (<u>Amended 12/15/88</u>)
		KSP 110000-14	Vocational School Placement
		KSP 110000-15	Transfers to Kentucky Correctional Psychiatric Center (KCPC) (<u>Amended 12/15/88</u>)

KSP 110000-16 Consideration of Further Treatment Requirements for Inmates Prior to Release

KSP 110000-18 Functions of the Classification Committee (Added 12/15/88)

KSP 120000-04 Academic Education

KSP 120000-07 Community Center Program

KSP 120000-08 Inmate Furloughs

KSP 120000-11 Religious Services - Staffing

KSP 120000-18 Religious Services - Religious Programming

KSP 120000-20 Marriage of Inmates

KSP 120000-31 Extended Furloughs

KSP 120000-32 Discharge of Inmates by Shock Probation

KSP 130000-10 Execution Plan

JOHN T. WIGGINTON, Secretary

APPROVED BY AGENCY: December 15, 1988

FILED WITH LRC: December 15, 1988 at 10 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for January 23, 1989 at 9 a.m., in the State Office Building Auditorium. Those interested in attending this hearing shall notify in writing: Barbara Jones, Office of General Counsel, 5th Floor, State Office Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Barbara Jones

(1) Type and number of entities affected: 343 employees of the Kentucky State Penitentiary, 807 inmates, and all visitors to state correctional institutions.

(a) Direct and indirect costs or savings to those affected:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None - All of the costs involved with the implementation of the regulations are included in the operational budget.

2. Continuing costs or savings: Same as 2(a)1.

3. Additional factors increasing or decreasing costs: Same as 2(a)1.

(b) Reporting and paperwork requirements: Monthly submission of policy revisions.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: None

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. All policies are administered in a uniform manner.

CORRECTIONS CABINET (Proposed Amendment)

501 KAR 6:120. Blackburn Correctional Complex.

RELATES TO: KRS Chapters 196, 197, 439

STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640

NECESSITY AND FUNCTION: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorizes the secretary to adopt, amend or rescind regulations necessary and suitable for the proper administration of the cabinet or any division therein. These regulations are in conformity with those provisions.

Section 1. Pursuant to the authority vested in the Corrections Cabinet the following policies and procedures are incorporated by reference on December 15 [November 15], 1988 and hereinafter should be referred to as Blackburn Correctional Complex and Procedures. Copies of the procedures may be obtained from the Office of the General Counsel, Corrections Cabinet, State Office Building, Frankfort, Kentucky 40601.

BCC 01-05-01	Duty Officer and Acting Warden
BCC 01-07-01	Extraordinary Occurrence Reports
BCC 01-09-01	Legal Assistance for Staff
BCC 01-10-01	Political Activities of Merit Employees
BCC 01-11-01	Roles of Consultants, Contract Employees, Volunteers and Employees of Other Agencies
BCC 01-13-01	Relationships with Public, Media, and Other Agencies
BCC 01-15-01	Internal Affairs Office
BCC 01-16-01	Tours of Blackburn Correctional Complex
BCC 01-19-01	Inmate Access to BCC Staff
BCC 02-01-01	Inmate Canteen
BCC 02-02-01	Fiscal Responsibility
BCC 02-02-02	Fiscal Management: Accounting Procedures
BCC 02-02-03	Fiscal Management: Checks
BCC 02-02-04	Fiscal Management: Budget
BCC 02-02-05	Fiscal Management: Insurance
BCC 02-02-06	Fiscal Management: Audits
BCC 02-04-01	Billing Method for Health Services Staff Paid by Personal Service Contract
BCC 02-05-01	Property Inventory
BCC 02-06-01	Purchasing
BCC 02-07-01	Inmate Personal Accounts
BCC 03-01-01	EEO - Affirmative Action
BCC 03-02-01	General Guidelines for BCC Employees
BCC 03-02-03	Physical Examinations for New Employees and Emergency Notification
BCC 03-03-01	Travel Reimbursement for Official Business and Professional Meetings
BCC 03-04-01	Employment of Ex-offenders
BCC 03-06-01	Procedures for Selection, Retention, Promotion, and Lateral Transfer of Merit System Employees
BCC 03-06-02	Procedures for Promotional Opportunities
BCC 03-07-01	Workers' Compensation
BCC 03-08-01	Employee Assistance Program
BCC 03-09-01	Holding of Second Jobs by Employees
BCC 03-10-01	Student Intern (Co-op) and Practicum Placement Procedures

BCC 03-11-01	Maintenance, Confidentiality, and Challenge of Information Contained in Employee File	BCC 09-21-01	Tool Control
BCC 03-12-01	Work Assignments for Security Staff	BCC 09-22-01	Emergency Communication System
BCC 04-02-01	Firearms Training	BCC 10-01-01	Special Management Inmates
BCC 04-03-01	Educational Assistance Program	BCC 11-01-01	Menu and Special Diets
BCC 05-01-01	Inmate Participation in Authorized Research	BCC 11-02-01	Food Service: Inspection, Health Protection and Sanitation
BCC 06-01-01	Storage of Expunged Records	BCC 11-03-01	Food Service: Meals
BCC 06-02-01	Records - Release of Information	BCC 11-04-01	Dining Room Guidelines [(Amended 11/15/88)]
BCC 06-02-02	Offender Records <u>(Amended 12/15/88)</u>	BCC 11-05-01	Food Service Security: Knife & Other Sharp Instrument/Utensil Control
BCC 06-03-01	Reporting Inmate Misconduct Following Favorable Recommendation by the Parole Board	BCC 11-06-01	Purchasing, Storage and Farm Products
BCC 08-02-01	Natural Disaster Plan (Tornado)	BCC 11-07-01	Food Service Operations Manual
BCC 08-03-01	Emergency Preparedness Plan Manual	BCC 12-02-01	Personal Hygiene Items
BCC 08-04-01	Fire Safety Plan, Drills and Related Staff Duties [(Amended 11/15/88)]	BCC 12-02-02	Personal Hygiene for Inmates: Clothing, Linens and Shower Facilities [(Amended 11/15/88)]
BCC 08-04-02	Immediate Release of Inmates from Locked Areas	BCC 12-05-01	Barber Shop Services
BCC 08-06-01	<u>Storage Control and Accountability of Flammable, Toxic, Caustic and Other Hazardous Materials (Added 12/15/88)</u>	BCC 12-06-01	BCC Housekeeping Plan
BCC 08-07-01	Facility Furnishings: Exit and Emergency Lights and Noncombustible Containers	BCC 13-01-01	Sick Call and Pill Call [(Amended 11/15/88)]
BCC 09-01-01	Inclement Weather/Emergency Condition Operation	BCC 13-02-01	Administration and Authority for Health Services
BCC 09-02-01	Restricted Areas	BCC 13-03-01	Provisions of Health Care Delivery [(Amended 11/15/88)]
BCC 09-02-02	Inmate Pass System to Restricted Areas	BCC 13-04-01	Licensure and Training Standards
BCC 09-02-03	Regulation of Inmate Movement	BCC 13-05-01	Medical Alert System [(Amended 11/15/88)]
BCC 09-03-01	Inmate Identification [(Amended 11/15/88)]	BCC 13-06-01	Health Care Practices [(Amended 11/15/88)]
BCC 09-04-02	Complex Entry & Exit	BCC 13-07-01	Emergency Medical Care Plan [(Amended 11/15/88)]
BCC 09-05-01	Key Control	BCC 13-07-02	Emergency and Specialized Health Services [(Amended 11/15/88)]
BCC 09-06-02	Transportation to Courts	BCC 13-07-03	Immediate Medical Treatment for Person's Injured by Weapon or Chemical Agent
BCC 09-07-01	Drug Abuse and Intoxicants Testing	BCC 13-08-01	Inmate Health Screening and Evaluation [(Amended 11/15/88)]
BCC 09-08-02	Use of Restraints	BCC 13-09-01	Prohibition on Medical Experimentation
BCC 09-09-01	Population Counts and Count Documentation	BCC 13-10-01	Dental Services [(Amended 11/15/88)]
BCC 09-10-03	Development of Institutional Post Orders	BCC 13-11-01	Suicide Prevention and Intervention Program [(Amended 11/15/88)]
BCC 09-10-04	Governmental Services, Study Release Officer Post Orders	BCC 13-12-01	Use of Pharmaceutical products
BCC 09-10-05	Unit A-1 Post Orders	BCC 13-12-02	Parenteral Administration of Medications and Use of Psychotropic Drugs [(Amended 11/15/88)]
BCC 09-10-06	Recreation Post Orders: Observation	BCC 13-13-01	Inmate Health Education [(Amended 11/15/88)]
BCC 09-10-07	Entrance Gate Post Orders	BCC 13-14-01	Management of Serious and Infectious Diseases [(Amended 11/15/88)]
BCC 09-10-08	Visiting Area Post Orders	BCC 13-15-01	Informed Consent
BCC 09-10-09	Security Staff General Orders	BCC 13-16-01	Health Records
BCC 09-10-10	Dining Room Officer Post Orders	BCC 13-17-01	Notification of Inmate Family in the Event of Serious Illness, Injury or Surgery
BCC 09-12-01	Use of Physical Force; Prohibition of Personal Abuse and Corporal Punishment <u>(Amended 12/15/88)</u>	BCC 13-19-01	Physicians Referrals/Continuity of Care <u>(Amended 12/15/88)</u>
BCC 09-13-01	Perimeter Patrol	BCC 13-20-01	Chronic and Convalescent Care [(Amended 11/15/88)]
BCC 09-14-01	Prohibiting Inmate Authority Over Other Inmates	BCC 13-22-01	Psychiatric and Psychological Services, Handling of Mentally Retarded Inmates and Transfers
BCC 09-15-01	Search Policy/Disposition of Contraband	BCC 13-23-01	First Aid Kits [(Amended 11/15/88)]
BCC 09-16-01	Security Activity Logs	BCC 14-01-01	Office of Public Advocacy
BCC 09-17-01	Institutional Supervisor Inspections	BCC 14-02-01	Attorney Visits
BCC 09-18-01	Use of State Vehicles and Staff Owned Vehicles		Law Library
BCC 09-19-01	Duties and Responsibilities of the Institutional Captain		
BCC 09-19-02	Duties and Responsibilities of the Shift Supervisor		
BCC 09-20-01	Inmate Death		

BCC 14-03-01 Inmate Grievance Procedure
 BCC 14-04-01 Inmate Rights and Responsibilities
 BCC 14-05-01 Inmate Claims
 BCC 15-01-01 Authorized Inmate Personal Property [(Amended 11/15/88)]
 BCC 15-02-01 Meritorious Living Unit (B-1) [(Amended 11/15/88)]
 BCC 15-02-02 Room Assignment [(Added 11/15/88)]
 BCC 15-03-01 Rules and Regulations for Dormitories [(Amended 11/15/88)]
 BCC 15-04-01 Restoration of Forfeited Good Time
 BCC 15-05-01 Extra Duty Assignments
 BCC 15-06-01 Due Process/Disciplinary Procedures
 BCC 16-01-01 Inmate Furloughs [(Amended 11/15/88)]
 BCC 16-02-01 Visiting [(Amended 11/15/88)]
 BCC 16-03-01 Inmate Packages [(Amended 11/15/88)]
 BCC 16-03-02 Outgoing Inmate Packages
 BCC 16-03-03 Inmate Correspondence [(Amended 11/15/88)]
 BCC 17-03-01 Processing of New Inmates From Local Jails [(Added 11/15/88)]
 BCC 18-01-01 Classification: Institutional Classification and Reclassification
 BCC 18-02-01 Racial Balance in Living Areas
 BCC 19-01-01 Inmate Work Programs
 BCC 19-02-01 Classification of Inmates to Governmental Service Program (Amended 12/15/88)
 BCC 19-03-01 Correctional Industries
 BCC 20-01-01 Academic and Vocational School (Amended 12/15/88)
 BCC 20-02-01 College Programs (Amended 12/15/88)
 BCC 20-04-01 Educational Program Evaluation
 BCC 20-05-01 Educational Program Planning (Amended 12/15/88)
 BCC 20-06-01 Academic and Vocational Curriculum (Amended 12/15/88)
 BCC 21-01-01 Library Services
 BCC 22-01-01 Arts and Crafts/Production and Sale of Items
 BCC 22-02-01 Privileged Trips (Amended 12/15/88)
 BCC 22-03-01 Recreational Employees
 BCC 22-04-01 Recreation and Inmate Activities
 BCC 22-04-02 Inmate Clubs and Organizations
 BCC 22-04-03 Conducting Inmate Organizational Meetings and Programs
 BCC 22-04-04 Recreation Program Availability
 BCC 22-04-05 Supervision of Leisure-Time Craft Club Activities and Materials
 BCC 22-06-01 Music Club
 BCC 22-09-01 Use of Inmates in Recreation Programs
 BCC 23-01-01 Religious Services
 BCC 24-01-01 Duties and Responsibilities of Classification and Treatment Officers (Amended 12/15/88)
 BCC 24-02-01 Duties and Responsibilities of the Unit Director and Assistant to Unit Director
 BCC 24-03-01 Social Services
 BCC 25-01-01 Inmate Check Out Procedure
 BCC 25-02-02 Temporary Release/Community Center Release
 BCC 25-05-01 Supplemental Parole Progress Reports [(Added 11/15/88)]
 BCC 26-01-01 Citizen Involvement and Volunteer Service Program

JOHN T. WIGGINTON, Secretary

APPROVED BY AGENCY: December 15, 1988

FILED WITH LRC: December 15, 1988 at 10 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for January 23, 1989 at 9 a.m., in the State Office Building Auditorium. Those interested in attending this hearing shall notify in writing: Barbara Jones, Office of General Counsel, 5th Floor, State Office Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Barbara Jones

(1) Type and number of entities affected: 90 employees of the Blackburn Correctional Complex, 356 inmates, and all visitors to state correctional institutions.

(a) Direct and indirect costs or savings to those affected:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None - All of the costs involved with the implementation of the regulations are included in the operational budget.

2. Continuing costs or savings: Same as 2(a)1.

3. Additional factors increasing or decreasing costs: Same as 2(a)1.

(b) Reporting and paperwork requirements: Monthly submission of policy revisions.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: None

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. All policies are administered in a uniform manner.

CORRECTIONS CABINET

(Proposed Amendment)

501 KAR 6:130. Western Kentucky Farm Center.

RELATES TO: KRS Chapters 196, 197, 439

STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640

NECESSITY AND FUNCTION: KRS 196.035, 197.020, 439.470, 439.590 and 439.640 authorizes the secretary to adopt, amend or rescind regulations necessary and suitable for the proper administration of the cabinet or any division therein. This regulation is in conformity with those provisions.

Section 1. Pursuant to the authority vested in the Corrections Cabinet the following policies and procedures are incorporated by reference on December 15 [October 14], 1988 and hereinafter

should be referred to as Western Kentucky Farm Center Policies and Procedures. Copies of the procedures may be obtained from the Office of the General Counsel, Corrections Cabinet, State Office Building, Frankfort, Kentucky 40601.

WKFC 01-09-01 Duty Officers, External and Internal Inspections, and Staff Tours

WKFC 02-01-01 Inmate Funds

WKFC 02-00-03 Invoice/Voucher Processing

WKFC 02-00-06 Purchasing Procedures

WKFC 02-01-01 Inmate Funds

WKFC 02-02-01 Agency Funds and Accounting Procedures

WKFC 02-08-01 Property Receipt and Inventory Procedures

WKFC 04-01-01 Travel Reimbursement for Official Business in Attendance at Professional Meetings

WKFC 04-02-01 Employee Training and Development

WKFC 04-04-01 Educational Assistance Program

WKFC 05-01-01 Research, Consultants, and Student Interns

WKFC 06-00-01 Offender Records and Information Access

WKFC 06-00-02 Court Orders, Orders of Appearance, Warrants, Detainers, Etc.

WKFC 09-00-01 Drug Abuse Testing (Amended 12/15/88)

WKFC 10-02-01 Special Management Inmate(s)

WKFC 11-00-02 Food Service Inmate Work Responsibilities, Evaluations, and Health Requirements

WKFC 11-00-03 Food Service Inspections, Sanitation, Purchasing, Storage, and Corrections Cabinet Farm Products

WKFC 11-02-01 Food Service General Guidelines

WKFC 11-02-02 Food Service Security

WKFC 11-03-01 Food Service Meals, Menus, Nutrition and Special Diets

WKFC 12-01-01 Inmate Clothing

WKFC 13-00-01 Special Health Programs

WKFC 13-01-01 Use of Pharmaceutical Products

WKFC 13-02-01 Health Care Services (Amended 12/15/88)

WKFC 14-00-01 Inmate Rights and Responsibilities

WKFC 14-04-01 Legal Services Program

WKFC 14-06-01 Inmate Grievance Procedure

WKFC 15-01-01 Hair and Grooming Standards

WKFC 15-03-01 Meritorious Good Time

WKFC 15-05-01 Restoration of Forfeited Good Time

WKFC 16-01-01 Visiting Policy and Procedures [(Amended 10/14/88)]

WKFC 16-02-01 Inmate Correspondence (Amended 12/15/88)

WKFC 16-03-01 Inmate Access to Telephones

WKFC 16-04-01 Inmate Packages

WKFC 17-01-01 Inmate Personal Property

WKFC 17-02-01 Inmate Reception and Orientation

WKFC 18-01-01 Structure, Guidelines, and Functions of the Classification Committee

WKFC 18-13-01 Meritorious Housing [(Amended 10/14/88)]

WKFC 19-03-01 Inmate Wage Program

WKFC 19-04-01 Work/Program Assignments

WKFC 20-04-01 Academic Education Program(s)

WKFC 20-03-01 Vocational Education Program(s)

WKFC 22-00-01 Inmate Recreation and Leisure Time Activities

WKFC 22-00-02 Inmate Clubs & Organizations

WKFC 23-00-01 Religious Services (Amended 12/15/88)

WKFC 25-01-01 Gratuities

WKFC 25-02-01 Inmate Release Process

WKFC 25-03-01 Prerelease Programs

WKFC 26-01-01 Volunteer Services Program (Amended 12/15/88)

JOHN T. WIGGINTON, Secretary

APPROVED BY AGENCY: December 15, 1988

FILED WITH LRC: December 15, 1988 at 10 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for January 23, 1989 at 9 a.m., in the State Office Building Auditorium. Those interested in attending this hearing shall notify in writing: Barbara Jones, Office of General Counsel, 5th Floor, State Office Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Barbara Jones

(1) Type and number of entities affected: 82 employees of the Western Kentucky Farm Center, 295 inmates, and all visitors to state correctional institutions.

(a) Direct and indirect costs or savings to those affected:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None - All of the costs involved with the implementation of the regulations are included in the operational budget.

2. Continuing costs or savings: Same as 2(a)1.

3. Additional factors increasing or decreasing costs: Same as 2(a)1.

(b) Reporting and paperwork requirements: Monthly submission of policy revisions.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: None

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. All policies are administered in a uniform manner.

TRANSPORTATION CABINET Department of Vehicle Regulation Division of Motor Carriers (Proposed Amendment)

601 KAR 1:005. Safety regulations.

RELATES TO: KRS Chapters 138, 281, Title 49, Code of Federal Regulations, Part 390-397

STATUTORY AUTHORITY: KRS 138.665, 281.600, 281.726, 281.730, 281.750, Title 49, Code of Federal Regulations, Part 390-397

NECESSITY AND FUNCTION: This regulation sets out safety procedures to be followed by motor carriers operating in the Commonwealth of Kentucky. [It further sets forth the requirement for a unique identifier on the sides of each vehicle subject to the taxes of KRS 138.660.]

Section 1. Definitions. (1) "Farm-to-market agricultural transportation" means the operation of a motor vehicle that is controlled and operated by a farmer who, as a private motor carrier is using the vehicle to transport agricultural products from his farm or to transport farm machinery or farm supplies to his farm. The transportation of hazardous materials of a type or quantity that requires the vehicle to be marked or placarded in accordance with 601 KAR 1:025, Transporting hazardous materials, permit, is not included in this definition.

(2) "Daylight hours" means that period of time one-half (1/2) hour before sunrise through one-half (1/2) hour after sunset.

(3) "Load limit" means the rated seating capacity for which a vehicle is licensed plus twenty-five (25) percent of the rated seating capacity.

Section 2. [1.] (1) All commercial motor vehicles operated for-hire or in private carriage, interstate or intrastate, except those listed in subsection (2) of this section shall be governed by the Motor Carrier Safety Regulations adopted and issued by the United States Department of Transportation relating to the following subjects: Title 49, Code of Federal Regulations Part 390, General, excluding Part 390.5, effective November 15, 1988; Title 49, Code of Federal Regulations, Part 391, [dated October 1, 1983 as amended through June 12, 1986,] Qualifications of Drivers, effective November 15, 1988 except that Part 391.15(c) is adopted as effective on June 12, 1986; Title 49, Code of Federal Regulations, Part 392, [dated October 1, 1983 as amended through August 19, 1987,] Driving of Motor Vehicles, effective November 15, 1988 except that Part 392.5(a)(2) is as adopted as effective on August 19, 1987; Title 49 Code of Federal Regulations, Part 393, [dated October 1, 1983 as amended through February 26, 1987,] Parts and Accessories Necessary for Safe Operation, effective November 15, 1988; Title 49, Code of Federal Regulations, Part 394, [dated October 1, 1983 as amended through March 10, 1987,] Notification, Recording and Reporting of Accidents, effective November 15, 1988; Title 49, Code of Federal Regulations, Part 395, [dated October 1, 1983 as amended through November 23, 1984,] Hours of Service of Drivers, effective November 15, 1988; Title 49, Code of Federal Regulations, Part 396, [dated October 1, 1983 as amended through September 28, 1984,] Inspection, Repair and Maintenance, effective November 15, 1988; Title 49, Code of Federal Regulations, Part 397, [dated October 1, 1983 as amended through September 28, 1984,] Transportation of Hazardous Materials; Driving and Parking Rules, effective November 15, 1988; Title 49, CFR Parts 391 and 392 are incorporated by reference as amended. Title 49, CFR Parts 390 excluding 390.5 and 393-397 are adopted without change. [; are hereby adopted and incorporated herein by reference, and all commercial motor vehicles operated for-hire or in private carriage, intrastate and interstate, shall comply therewith. These regulations are not

applicable to motor vehicles primarily designed for carrying passengers and having provisions for not more than eight (8) passengers and the driver, motorcycles, side car attachments and motor vehicles owned by the federal government, a state, a county, a city, or a board of education.]

(2) [Subject to] The following exemptions and exceptions to compliance with the provisions of subsection (1) of this section are adopted:

(a) City buses, suburban buses, taxicabs, motorcycles and motor vehicles primarily designed for carrying passengers and having provisions for not more than eight (8) passengers and the driver [(except those motor vehicles transporting hazardous materials, Part 397) operated exclusively in a residential or business district of a city] are not required to comply with the federal regulations adopted by or incorporated by reference in this administrative regulation [the aforesaid safety regulations].

(b) Vehicles owned by the federal government, a state government, a county government, a city government, or a board of education and vehicles operating in interstate commerce which are specifically excluded by Title 49, Code of Federal Regulations, Part 390 are not required to comply with the federal regulations adopted by or incorporated by reference in this administrative regulation.

(c) Motor vehicles which are used [(b) Private carriers engaged] exclusively in farm-to-market agricultural transportation [operation] when operated during daylight hours by a private motor carrier are not required to comply with Title 49, Code of Federal Regulations, Part 393, Subpart B, [the above safety regulations] relative to lighting device [fixture] requirements. They are, however, required to have two (2) stop lamps [brake lights] and mechanical turn signals as set forth in 49 CFR 393, Subpart B. [The term "farm-to-market agricultural transportation" means the operation of a motor vehicle that is controlled and operated by a farmer who, as a private carrier is using the vehicle to transport agricultural products from his farm or to transport farm machinery, farm supplies, or both to his farm. However, the term "farm-to-market agricultural transportation" does not include the operation of a motor vehicle transporting hazardous materials of a type or quantity that requires the vehicle to be marked or placarded in accordance with 49 CFR 177. The term "daylight hours" means that period of time one-half (1/2) hour before sunrise through one-half (1/2) hour after sunset.]

(d) [(c)] Motor vehicles which are used exclusively for the transportation of primary forest products from the harvest area to a mill or other processing facility which is located at a point not more than fifty (50) air miles from the harvest area when operated during daylight hours are not required to comply with Title 49, Code of Federal Regulations, Part 393, Subpart B [the above safety requirements] relative to lighting devices requirements [fixtures when operated during daylight hours]. They are, however, required to have two (2) stop lamps [brake lights] and mechanical turn signals as set forth in 49 CFR 393, Subpart B.

Section 3. [2.] Title 49, Code of Federal Regulations, Part 390.5, Definitions, effective

November 15, 1988, except that the definitions of "alcohol concentration," "conviction," and "driving a commercial motor vehicle while under the influence of alcohol" are excluded. [dated October 1, 1983 as amended through April 14, 1986, General,] is incorporated by reference [hereby adopted] for the purposes of application to 49 Code Federal Regulations Sections 391-397.

Section 4. [3.] A summary of the content of each federal regulation governing motor carrier safety [herein incorporated by reference] follows:

(1) Part 390 - applicable definitions and general policy.

(2) Part 391 - qualification and disqualification criteria for drivers; background and character of drivers; required examination and tests of drivers; required physical qualification and medical examinations of drivers; driver qualification recordkeeping; and limited driver exemptions.

(3) Part 392 - vehicle operation standards including the use of alcohol and drugs by the driver; the safe operation of the vehicle; the use of lighted lamps and reflectors on the vehicle; the duties of the driver in case of an accident; fueling precautions; and prohibited practices.

(4) Part 393 - parts and accessories necessary for the safe operation of a motor vehicle including lighting devices, brakes, window construction, fuel systems, coupling devices, emergency equipment, miscellaneous parts and accessories; and protection against shifting or falling cargo.

(5) Part 394 - establishes the duties of motor carriers to make reports and keep records of accidents which occur during their operations.

(6) Part 395 - outline of the allowed hours of service of drivers.

(7) Part 396 - specifics of the inspection of a motor vehicle by the driver and federally authorized personnel and the records required to be maintained on vehicle maintenance and inspection.

(8) Part 397 - standards for the transportation of hazardous materials including driving, placarding and parking procedures.

Section 5. [4.] Buses. Buses shall [must] be maintained in a clean and sanitary condition so that the health of passengers will not be impaired. Seats shall [must] be comfortable in order that passengers will not be subjected to unreasonable discomfort which might be detrimental to their health and welfare. Employees in charge of buses shall be courteous and helpful to passengers, properly caring for baggage so that it will not be damaged, and shall [should] be acquainted with the routes traveled and schedules maintained, so that the passengers will not be subjected to unnecessary delays. All operators shall [must] take into consideration the health and welfare of their passengers and control their operations in the public interest. Express and freight, mail bags, newspapers and baggage shall [must] be so placed as not to interfere with the driver or with the safety and comfort of passengers. These [Such] items shall [must] be protected from the weather but shall not be carried in the aisles or in such position as to block exits or doorways on the bus. [No aisle seat shall be permitted in any bus and the driver's seat must be separated

from every other seat.]

Section 6. [5.] Overcrowding of Passenger Vehicles. No bus operated by an authorized carrier, except city or suburban buses, shall transport passengers in excess of its [the] load limit [hereinafter set forth. The load limit shall be the rated seating capacity for which the vehicle is licensed plus twenty-five (25) percent of said rated seating capacity. This load limit is subject to the provision that in no event shall any authorized carrier, including city or suburban bus operators, permit standees to occupy that space forward of a plane drawn through the rear of the driver's seat perpendicular to the longitudinal axis of the bus. This forward space shall be plainly marked with a line, or otherwise equipped with identification, so as to indicate to standees that they are prohibited from occupying it]. No passenger shall be permitted to occupy the rear door-well of any bus vehicle that is equipped with [such] a rear door-well. [Taxicabs shall not carry a number of passengers greater than the rated seating capacity of the vehicle, and in no event more than fifteen (15) passengers exclusive of the driver.]

[Section 6. Identification. All carriers must at all times display on each side of every vehicle employed by them in their operations the name of the person conducting the said operation as it appears upon the certificate or permit authorizing the operation. An assumed or trade name may be used providing the appropriate statutes and regulations are complied with and the assumed or trade name also appears upon the certificate or permit. The letters shall be of sufficient size so as to be readily legible. The vehicle identification card issued for the vehicle must at all times be prominently displayed on the inside thereof. The name of the driver operating a vehicle engaged in transportation of persons for hire shall be prominently displayed in the vehicle.]

[Section 7. Tax Identification Number. (1) Every commercial motor vehicle having a declared gross weight above 26,000 pounds with three (3) or more axles, which is subject to those taxes in KRS 138.660, shall when operating upon the public highways of the Commonwealth of Kentucky, display on the vehicle the control number of the motor carrier under whose authority the vehicle is being operated and a unique vehicle identification number for the vehicle. The motor carrier control number required by this regulation shall only be accepted by the Department of Vehicle Regulation for the purpose of exterior display on the vehicle, and shall not be accepted for any other purpose. These numbers may be permanently affixed to the vehicle or displayed by use of a removable device. The term commercial motor vehicle as used in this section of the administrative regulation shall not include farm vehicles properly registered under KRS 186.050(4).]

[(2) The control number of a motor carrier for the purposes of this regulation shall mean either an Interstate Commerce Commission motor carrier (ICC MC) number as required by 49 CFR 1058.2; a U.S. Department of Transportation (DOT) number as required by 49 CFR 290.21; or a Kentucky highway motor fuel use license number (KYU) as required by KRS 138.665. All ICC MC or

DOT numbers shall be validated with the Department of Vehicle Regulation prior to their being accepted as a control number. This number shall be placed on both sides of the main body of the cab directly under the name or name and address, of the motor carrier. The numbers shall be immediately preceded by an alpha prefix indicating that the number is an ICC, MC, DOT, or KYU number. The figures shall be in sharp color contrast to the background of the vehicle and of such size, shape and color as to be readily legible during daylight hours from a distance of fifty (50) feet when the vehicle is not in motion. These numbers shall be placed on the vehicle no higher than the top of the side window, and no lower than the bottom of the cab door.]

[(3) The unique vehicle identification number, for the purpose of this regulation, shall mean a company unit number assigned to the vehicle. This number shall be displayed on the front of the vehicle readily visible in daylight hours from a distance of 100 feet when the vehicle is not in motion. The number shall be in sharp color contrast to the background of the vehicle, and be placed no higher than the windshield and no lower than the front bumper.]

[(4) If a KYU number and the unique vehicle identification number was permanently affixed on the exterior of both cab doors or affixed to a panel directly adjacent to the cab doors of the vehicle prior to August 1, 1988, it shall be considered in compliance with this section of the administrative regulation provided the number complies with all visibility, height, and prefix requirements.]

Section 7. [8.] Out of Service Sticker. If [In the event] a commercial vehicle is determined to be operating either improperly registered or without registration or in violation of any safety regulation or requirement, officers of the Division of Motor Vehicle Enforcement are authorized to affix to the vehicle [thereto] a notice indicating the nature of the violation, requiring its correction before the motor vehicle is further operated. Refusal of the vehicle operator to grant permission for an officer of the Division of Motor Vehicle Enforcement to conduct a safety inspection of either the vehicle or its operator shall be cause for the officer to place the vehicle out of service until such permission is granted. Operation of [such] a vehicle in violation of the out of service notice affixed to it [thereto] shall constitute a separate violation of these regulations.

Section 8. [9.] Copies of all incorporated material may be viewed in the Transportation Cabinet, Department of Vehicle Regulation, Division of Motor Vehicle Enforcement, State Office Building, Frankfort, Kentucky 40601, or obtained by writing the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

MILO D. BRYANT, Secretary

JEROME L. LENTZ, Acting Commissioner

APPROVED BY AGENCY: December 6, 1988

FILED WITH LRC: December 13, 1988 at 10 a.m.

PUBLIC HEARING: A public comment hearing will be held on this administrative regulation on January 24, 1989 at 10 a.m., local prevailing time in the Fourth Floor Hearing Room of the

State Office Building located at the corner of High and Clinton Streets, Frankfort, Kentucky. Any person who intends to attend this hearing must in writing by January 19, 1989 so notify this agency. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the administrative regulation. If the hearing is held, written comments will be accepted until the close of the hearing. If the hearing is cancelled, written comments will only be accepted until January 19, 1989. Send written notification of intent to attend the public hearing or written comments on the administrative regulation to: Sandra G. Pullen, Executive's Staff Advisor, Transportation Cabinet, 10th Floor State Office Building, Frankfort, Kentucky 40622.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Sandra G. Pullen

(1) Type and number of entities affected: The 30,000 owners of commercial vehicles with over 10,000 lbs. gross weight which operate in Kentucky.

(a) Direct and indirect costs or savings to those affected: Direct costs are the cost of enhanced maintenance of these vehicles. However, an incalculable indirect savings will result from prevented accidents.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: No change. The motor carriers are still required to maintain records pertaining to driver qualification, driver working hours and vehicle maintenance, accident reports must still be submitted. They must still followup with the Federal Highway Administration on any notice of noncompliance with the safety regulations issued by a vehicle enforcement officer.

(2) Effects on the promulgating administrative body: No change.

(a) Direct and indirect costs or savings: The Transportation Cabinet will continue to enforce the safety regulations.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: A report of safety violations must still be submitted to the Federal Highway Administration.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: The alternative of not updating our safety regulations to match the federal safety regulations was rejected to enhance motor carrier safety in Kentucky. It was also rejected so as not to jeopardize federal funding for motor carrier safety.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in

conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied? Yes

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. PL 98-554, the Motor Carrier Safety Act of 1984 enacted 49 USC 2507. This federal statute requires that effective October 30, 1989 no state law or regulation may be in effect or enforced with respect to commercial motor vehicle safety which the U.S. Department of Transportation Secretary has determined may not be in effect or enforced. He may make such determination if he determines that state motor carrier safety laws or regulations are in direct conflict with or less stringent than the federal motor carrier safety laws and regulations. He may also make such a determination if the state laws or regulations are more stringent and there is no safety benefit provided or there is an undue burden placed on interstate commerce.

While 49 U.S.C. 2507 is not actually a mandate that we adopt the federal regulations, the Transportation Cabinet has determined that this is the best method for compliance. However, extreme care must be taken each time a revision is made to a federal regulation to ensure that it does not conflict with state law. Such a conflict occurred on October 27, 1988 regarding the blood alcohol content of motor carrier driver. Since the federal regulations set the upper limit lower than does state law, the Cabinet is unable to adopt this part of the federal regulations until after the legislature has amended state law. However, the authorizing federal statutes allow the states to have a delayed implementation date no later than early 1992.

2. State compliance standards.

3. Minimum or uniform standards contained in the federal mandate.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. N/A

CABINET FOR HUMAN RESOURCES Department for Health Services (Proposed Amendment)

902 KAR 13:050. Training, examination and certification.

RELATES TO: KRS 211.960 to 211.968, 211.990(5)
STATUTORY AUTHORITY: KRS 211.964

NECESSITY AND FUNCTION: KRS 211.964 directs the Cabinet for Human Resources to adopt rules and regulations relating to emergency medical technicians. The function of this regulation is to establish requirements for training; examination, certification, and renewal and recertification of emergency medical technicians.

Section 1. EMT Training Course Requirements.
The training course shall:

(1) Include the Basic Emergency Medical Technician: National Standard Curriculum (Third Edition, 1984) of the U.S. Department of Transportation and such additions, deletions or changes to the curriculum as prescribed by the cabinet and the accompanying text entitled "Emergency Care," Fourth Edition, 1986, published by The Brady Company, Prentice-Hall, Inc., Englewood Cliffs, N.J. 07632. A copy of these publications, included by reference as if full incorporated herein, shall be on file in the office of the Emergency Medical Services Branch, Department for Health Services, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621 [40601], and shall be available for public inspection between 8 a.m. and 4:30 p.m., Monday through Friday;

(2) Be at least 103 hours in duration;

(3) Not be started until completed course inventory form is received by the cabinet verifying that all equipment, texts, television tapes, and other materials specified are available, in proper quantities, in proper working condition, and placed in secure storage;

(4) Not share equipment between courses unless such equipment is housed in the same building and is available equally to all EMT classes;

(5) Utilize equipment, texts, television tapes and other materials approved by the cabinet;

(6) Be taught by an EMT instructor certified by the Cabinet for Human Resources;

(7) Have at least one (1) EMT instructor-trainee; or one (1) additional EMT instructor;

(8) Have a class certification number assigned by the cabinet;

(9) Be limited to thirty (30) students; and

(10) Not permit more than one (1) lesson absence per student, unless made up at the discretion of the instructor, or made up in a subsequent EMT training course. The lesson made up shall be the same lesson that was missed.

(11) Require each student to sign in for each lesson on attendance sheets provided by the cabinet.

(12) Require the instructor at the end of each course to provide the cabinet the following: master grade sheet, answer sheets for all written exams, final practical exams, application for certification with prescribed fee, master attendance form and attendance sheets for each lesson.

Section 2. EMT Certification Examination. The cabinet shall prescribe the format and content of the EMT's certification examinations which shall consist of two (2) parts:

(1) Written. The written examination shall be in four (4) parts. An overall passing grade of seventy-five (75) percent, shall be required. In the event an applicant's overall average is less than seventy-five (75) percent, but is seventy (70) percent or more, the applicant may, upon proper application, retake the part in which he made the lowest score. However, should the applicant again fail, he shall be required to retake the entire EMT training course before being eligible for reexamination.

(2) Practical. The applicant shall successfully pass all parts of the final practical examination. In the event he fails to successfully pass all portions of the final practical examination, he shall be permitted one (1) opportunity to retake the part which he failed to pass. However, should the applicant

again fail to pass the particular part of the examination, he shall be required to retake the entire EMT training course before being eligible for reexamination. An instructor who is employed by the organization for whom the EMT class is conducted shall not evaluate in the practical examination of that class.

Section 3. Certification of EMTs and EMT-A. The cabinet shall certify EMTs based upon the type of service to be rendered. An EMT engaged in ambulance service shall be issued certification as an "emergency medical technician-ambulance (EMT-A)."

Section 4. Expiration of Certification. All EMT certificates shall expire two (2) years from the date of issuance.

Section 5. Renewal of Certification; In-service Training or Continuing Education Requirements. In order to renew a certificate, the emergency medical technician shall, during his period of certification, attain at least sixteen (16) hours of in-service training or continuing education, or a combination thereof, and show evidence of certification in cardiopulmonary resuscitation as required by the American Heart Association or the American National Red cross.

(1) Subject matter requirements for EMT in-service training or continuing education.

(a) To receive credit for in-service training or continuing education, the applicant for recertification may take in-service training or continuing education on any subject covered by the United States Department of Transportation emergency medical technician curriculum, 3rd edition, or any subject for which instruction is authorized by the Cabinet for Human Resources for the emergency medical technician program in Kentucky.

(b) The applicant for recertification shall submit evidence of successful completion of instruction in at least four (4) different areas of emergency medical technician course subject matter instruction or skills instruction, in addition to cardiopulmonary resuscitation.

(c) The following are not eligible for credit as in-service training or continuing education:

1. Ambulance runs, rescues, firefighting, emergency responses, or similar actual emergency activities.

2. Instruction in material, techniques, or procedures not authorized to be performed by emergency medical technicians.

(d) Evidence of training and CPR certification shall be submitted to the cabinet not less than thirty (30) days before the expiration of the EMT's certification on forms supplied by the cabinet.

(e) The form provided by the cabinet shall contain a certification as to the truth of the information supplied and a statement that all training claimed conforms to the requirements of this regulation and a warning that submission of false information constitutes a violation of law.

(f) Each subject or training course claimed shall be countersigned by the instructor of the subject or course.

(g) Training received as a requirement for continuing education in medicine, nursing, paramedic, or as an EMT in a coal mining situation required by KRS 351.127 is eligible for in-service training or continuing education

credit if it meets the criteria of paragraph (a) of this subsection.

(2) Instructors for EMT in-service training and continuing education. The following persons are considered as qualified to conduct in-service training and continuing education courses for emergency medical technicians:

(a) A physician licensed pursuant to KRS Chapter 311.

(b) A registered nurse licensed pursuant to KRS Chapter 314.

(c) A paramedic certified by the State Board of Medical Licensure.

(d) An emergency medical technician instructor or instructor trainer certified by the Cabinet for Human Resources.

(e) An instructor certified by a state or federal agency who is teaching within the area authorized by his certification a course which will qualify for emergency medical technician in-service training or continuing education.

(f) Physicians, registered nurses, paramedics or emergency medical technician instructors currently licensed or certified by another state of the United States of America shall be considered as meeting the requirements of paragraphs (a) through (e) of this subsection, as applicable.

(3) Cardiopulmonary resuscitation requirement. During the second year of the certification period the EMT shall obtain or renew certification in cardiopulmonary resuscitation and related techniques as follows:

(a) The course shall be conducted by the American Heart Association or the American National Red Cross or under its authority by an instructor certified by the American Heart Association or the American National Red Cross.

(b) The course shall be taught for record and shall be certified by the instructor to the American Heart Association or the American National Red Cross as meeting all applicable standards of the organization.

(c) The course shall provide instruction and testing in:

1. One (1) rescuer cardiopulmonary resuscitation;

2. Two (2) rescuer cardiopulmonary resuscitation;

3. Techniques of changing from one (1) rescuer to two (2) rescuers during the performance of cardiopulmonary resuscitation;

4. Techniques of changing rescuers during the performance of two (2) rescuer cardiopulmonary resuscitation;

5. Techniques for relief of obstruction of the airway;

6. Cardiopulmonary resuscitation of infants and small children;

7. Mouth to mouth/mouth to nose resuscitation for adults, small children, and infants.

(d) The course shall provide for individual skill testing of all adult and infant related skills in subsection (3) of this section.

(e) The applicant for renewal of certification shall forward to the Cabinet for Human Resources a copy of both sides of the certificate issued to him indicating successful completion of the CPR course.

(4) In-service training and continuing education requirements for emergency medical technician instructors and instructor trainers.

(a) An emergency medical technician instructor or instructor trainer shall meet the in-service training or continuing education requirements

for recertification in the following manner:

1. Conduct an emergency medical technician course; or
2. Teach one (1) or more lessons of an emergency medical technician course; or
3. Teach one (1) or more lessons of an in-service training or continuing education course; or
4. Conduct a final practical examination or challenge examination for an emergency medical technician course; and

(b) If paragraph (a)2 through 4 of this subsection are claimed for recertification, the total number of hours spent in instruction or examinations shall not be less than sixteen (16) hours. Any combination of hours totaling sixteen (16) may be used; and

(c) An emergency medical technician instructor trainer may utilize time spent in conducting an emergency medical technician instructor course or evaluation in lieu of time required in paragraph (a) of this subsection; and

(d) An emergency medical technician instructor or instructor trainer shall attend either the annual emergency medical technician instructor conference or the annual training session for newly appointed instructors. Time spent at such conferences may be used as credit toward the time required in paragraph (a) or (b) of this subsection; and

(e) Additionally, each emergency medical technician instructor or instructor trainer shall meet the cardiopulmonary resuscitation requirement or shall teach a cardiopulmonary resuscitation course for record or shall teach the cardiopulmonary resuscitation portion of the emergency medical technician course to emergency medical technician students.

Section 6. Temporary Extension of Certificate. Upon a showing of undue hardship in obtaining the required in-service training or continuing education for renewal, the cabinet may extend a certificate for an additional six (6) months.

Section 7. Challenge Examination Procedure [Emergency Medical Technicians Certified in Other States and U.S. Military Corpsmen]. Upon proper application, to include a letter from an employer demonstrating need for certification, and [upon] payment of the prescribed fee, the following may take the Kentucky "Challenge Examination," consisting of both written and practical parts, the standards for such examination being the same as for an emergency medical technician course [for certification as an EMT]:

(1) U.S. Military Corpsmen, within a period of one (1) year from the date of discharge, who have either a:

- (a) U.S. Army MOS 91B or 91C; or
- (b) Its equivalent for other services.

(2) Emergency medical technicians, currently certified in other states.

(3) Individuals whose emergency medical technician certification has been expired for not more than five (5) years and who were in good standing when certification expired, shall submit the following additional documentation at the time of application:

(a) Proof of previous Kentucky emergency medical technician certification;

(b) A confirmation statement of intent to remain active;

(c) Proof of at least sixteen (16) hours of

in-service training or continuing education taught by an instructor meeting criteria as in Section 5(2) of this regulation, to include a minimum of one (1) hour in each of the following areas: airway management, diabetic emergencies, cardiovascular emergencies, multiple trauma, overdose/poisoning, medical/legal (EMS related), and patient assessment. In addition, the applicant shall submit proof of having completed four (4) hours of MAST Trouser Training, taught by an instructor meeting criteria as in Section 5(2) of this regulation; and

(d) Proof of current certification in cardio-pulmonary resuscitation as required by Section 5(3) of this regulation.

C. HERNANDEZ, Commissioner

HARRY J. COWHERD, M.D., Secretary

APPROVED BY AGENCY: December 14, 1988

FILED WITH LRC: December 15, 1988 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 23, 1989 at 9 a.m. at Health Services Auditorium. Individuals interested in attending this hearing shall notify this agency in writing by January 18, 1989, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street - 4 West, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Mel Counts

(1) Type and number of entities affected: Of approximately 4,000 EMTs who will recertify the first year, less than one percent will be applicable to this regulation.

(a) Direct and indirect costs or savings to those affected: A \$16 recertification fee will be charged for each individual choosing to recertify by this method.

1. First year: The qualified individual would pay \$16 versus approximately \$50 to retake EMT course.

2. Continuing costs or savings: Recertification is valid for a two year period.

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: Reporting and paperwork requirements for this procedure will not be different than already established methods.

(2) Effects on the promulgating administrative body: Negligible.

(a) Direct and indirect costs or savings: Negligible.

1. First year: Negligible.

2. Continuing costs or savings: Negligible.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Negligible

(3) Assessment of anticipated effect on state and local revenues: Negligible

(4) Assessment of alternative methods; reasons why alternatives were rejected: This is an alternate for individuals who do not qualify to apply for recertification by other methods.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No other statute, regulation or policy conflicts with, overlaps or duplicates this regulation.

(a) Necessity of proposed regulation if in conflict: No conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: No conflict.

(6) Any additional information or comments: None

TIERING: Was tiering applied? Yes

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There is no federal statute mandating this regulation.

2. State compliance standards. There are state compliance standards listed in Section 7(3) of this regulation.

3. Minimum or uniform standards contained in the federal mandate. There is no federal standard for this regulation.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Again, there is no federal mandate for this regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. There are no mandated federal standards or requirements.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes (Local government operated ambulance service)

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. For local government operated ambulance services, this regulation may serve to provide an increase in the number of available qualified ambulance service personnel.

3. State the aspect or service of local government to which this administrative regulation relates. Personnel who may be available for a local government operated ambulance service.

4. How does this administrative regulation affect the local government or any service it provides? Would be beneficial in that the regulation provides an alternate procedure that would make available an increased number of qualified ambulance service personnel.

CABINET FOR HUMAN RESOURCES Department for Social Insurance Division of Management & Development (Proposed Amendment)

904 KAR 2:015. Supplemental programs for the aged, blind and disabled.

RELATES TO: KRS 205.245

STATUTORY AUTHORITY: KRS 194.050

NECESSITY AND FUNCTION: The Cabinet for Human Resources is responsible under Title XVI of the Social Security Act as amended by Public Law 92-603 to administer a state funded program of supplementation to all December, 1973, recipients of aid to the aged, blind and disabled, hereinafter referred to as AABD, disadvantaged by the implementation of the Supplemental Security Income Program, hereinafter referred to as SSI. KRS 205.245 provides not only for the mandatory supplementation program but also for supplementation to other needy aged, blind and disabled persons. This regulation sets forth the provisions of the supplementation program.

Section 1. Mandatory State Supplementation. Mandatory state supplementation payments must be equal to the difference between the AABD payment for the month of December, 1973, plus any other income available to the recipient as of that month and the total of the SSI payment and other income. Also included are those former aged, blind or disabled recipients ineligible for SSI due to income but whose special needs entitled them to an AABD payment as of December, 1973. Mandatory payments must continue until such time as the needs of the recipient as recognized in December, 1973, have decreased or income has increased to the December level.

(1) The mandatory payment is increased only when income as recognized in December, 1973, decreases, the SSI payment is reduced but the recipient's circumstances are unchanged, or the standard of need utilized by the department in determining optional supplementation payments for a class of recipients is increased.

(2) In cases of man and wife, living together, income changes after September, 1974, will result in increased mandatory payment only if total income of the couple is less than December, 1973, total income.

Section 2. Optional State Supplementation. Optional state supplementation is available to those persons meeting technical requirements and resource limitations of the aged, blind or disabled medically needy program as contained in 907 KAR 1:011 and 907 KAR 1:004 (except as otherwise specified herein) who require special living arrangements and who have insufficient income to meet their need for care. Special living arrangements include residence in a personal care home as defined in 902 KAR 20:036 or family care home as defined in 902 KAR 20:041 or situations in which a caretaker must be hired to provide care other than room and board. A supplemental payment is not made to or on behalf of an otherwise eligible individual when the caretaker service is provided by the spouse, parent (of an adult disabled child or a minor child), or adult child (of an aged or disabled parent) who is living with the otherwise eligible individual. When this circumstance exists and a person living outside the home is

hired to provide caretaker services, the supplemental payment may be made. Application for SSI, if potential eligibility exists, is mandatory.

Section 3. Resources Considerations. In determining countable resources and the effect of resources on eligibility, the following policies are applied.

(1) The upper limit for resources for an individual and for a couple is set at \$1,700 and \$2,550, respectively, effective January 1, 1986; at \$1,800 and \$2,700, respectively, effective January 1, 1987; at \$1,900 and \$2,850, respectively, effective January 1, 1988; and at \$2,000 and \$3,000, respectively, effective January 1, 1989.

(2) Income producing property with a net equity of \$6,000 or less is excluded.

(3) The first \$4,500 of equity value in an automobile is excluded; if used for employment, to obtain medical services, or if specially equipped (e.g., as for use by the handicapped) there is no upper limit on value.

(4) Burial reserves (life insurance, prepaid burial policy, etc.) up to \$1,500 are excluded. The face value of life insurance is considered when determining the total value of burial reserves if the face value of the life insurance is less than \$1,500. Burial spaces are excluded from consideration when computing the value of burial reserves.

(5) A homestead, household items, and personal items are excluded.

(6) Resources determined in accordance with subsections (2), (3), and (4) of this section to be in excess of excluded amounts must be considered countable resources when determining whether the individual or couple exceeds the upper limits specified in subsection (1) of this section. If resources exceed the upper limits, the individual or couple is ineligible.

Section 4. Income Considerations. In determining the amount of optional supplementation payment, total net income of the applicant or recipient, or applicant or recipient and spouse, including any payments made to a third party in behalf of an applicant or recipient, is deducted from the standard of need with the following exceptions:

(1) Income of the ineligible spouse is conserved for the needs of the ineligible, non-SSI spouse and/or minor dependent children in the amount of one-half (1/2) of the SSI standard for an individual for each person adjusted by deduction of sixty-five (65) dollars and one-half (1/2) of the remainder from monthly earnings of spouse. Income of the eligible individual is not conserved for the needs of the ineligible spouse and/or minor dependent children. When conserving for the needs of the minor dependent children, income of the children must be appropriately considered so that the amount conserved does not exceed the allowable amount. When the eligible individual and spouse each have earnings, the earnings must be combined prior to the application of the earnings disregard of sixty-five (65) dollars and one-half (1/2) of the remainder.

(2) If one (1) member of a couple is institutionalized and the SSI spouse maintains a home, income in the amount of the SSI standard for one (1) is conserved for the spouse.

Section 5. Standard of Need. (1) The standard, based on living arrangement, from which income as computed in Section 4 of this regulation is deducted to determine the amount of optional payment is as follows:

(a) Personal care home: not less than \$568 [546], effective 1/1/89 [1/1/88];

(b) Family care home: not less than \$462 [444], effective 1/1/89 [1/1/88];

(c) Caretaker.

1. Single individual, or eligible individual with ineligible spouse (one who is not aged, blind, or disabled): not less than \$398 [383], effective 1/1/89 [1/1/88];

2. Married couple, both eligible (aged, blind, or disabled), with one (1) requiring care: not less than \$578 [556], effective 1/1/89 [1/1/88];

3. Married couple, both eligible and both requiring care: not less than \$618 [594], effective 1/1/89 [1/1/88].

(2) In couple cases, both eligible, the couple's income is combined prior to comparison with the standard of need, and one-half (1/2) of the deficit is payable to each.

Section 6. Institutional Status. No aged, blind or disabled person shall be eligible for state supplementation while residing in a personal care home or family care home unless such home is licensed under KRS 216B.010 to 216B.131.

Section 7. Residency. (1) To be eligible, an applicant or recipient must be a citizen of the United States, or an alien legally admitted to this country or an alien who is residing in this country under color of law. An alien must have been admitted for permanent residence. The applicant or recipient must also be a resident of Kentucky. Generally, this means the individual must be residing in the state for other than a temporary purpose; however, there are exceptions with regard to applicants for or recipients of a state supplementary payment and institutionalized individuals. The residency criteria specified in federal regulations at 42 CFR 435.403 shall be applicable except as otherwise specified herein.

(2) Supplemental payments may be made to Kentucky residents residing outside the state only when the individual has been placed in the other state by this state. In these situations, the other requirements for eligibility shown in other sections of this regulation shall be applicable, except that with regard to the requirement shown in Section 6 of this regulation, the licensure shall be in accordance with a similar licensure act of the other state. If there is no similar licensure act in the other state, the payment may be made only if this state determines that, except for being in another state, the facility meets standards for licensure under the provisions of KRS 216B.010 to 216B.131. To be eligible for a supplemental payment while placed out-of-state the individual must require the level of care provided in the out-of-state placement, there must be no suitable placement available in Kentucky, and the placement must be preauthorized by staff of the Department for Social Insurance.

(3) When determining residency, ability of the individual to indicate intent (to become a Kentucky resident) must be considered if the individual is institutionalized. The individual is considered incapable of indicating intent if:

(a) His/her I.Q. is forty-nine (49) or less or he/she has a mental age of seven (7) or less, based on tests acceptable to the department; or

(b) He/she is judged legally incompetent; or

(c) Medical documentation, or other documentation acceptable to the state, supports a finding that he/she is incapable of indicating intent.

(4) An individual is institutionalized if he/she is residing in a facility providing some services other than room and board. Personal care facilities are considered to be institutions.

(5) For any noninstitutionalized individual under age twenty-one (21) whose eligibility for a supplemental payment is based on blindness or disability, his/her state of residence is Kentucky if he/she is actually residing in the state.

(6) For any noninstitutionalized individual age twenty-one (21) or over, his/her state of residence is Kentucky if he/she is residing in the state and has the intention to remain permanently or for an indefinite period (or, if incapable of indicating intent, is simply residing in the state).

(7) For any institutionalized individual living in Kentucky who is under age twenty-one (21) or who is age twenty-one (21) or older and became incapable of indicating intent before age twenty-one (21), the state of residence is Kentucky if:

(a) The state of residence of the individual's parents, or his/her legal guardian if one has been appointed, is Kentucky; or

(b) The state of residence of the parent applying for the supplemental payment on behalf of the individual is Kentucky, when the other parent lives in another state and there is no appointed legal guardian.

(8) For any institutionalized individual living in Kentucky who became incapable of indicating intent at or after age twenty-one (21), the state of residence is Kentucky if he/she was living in Kentucky when he/she became incapable of indicating intent. If this cannot be determined, the state of residence is Kentucky unless he/she was living in another state when he/she was first determined to be incapable of indicating intent.

(9) For individuals subject to determinations of residency pursuant to subsections (7) and (8) of this section, the state of residency is Kentucky when the individual is residing in Kentucky, and a determination of residency applying those criteria does not show the individual to be a resident of another state.

(10) For an individual subject to a determination of residency pursuant to subsections (7) and (8) of this section, the state of residence is Kentucky when Kentucky and the state which would otherwise be the individual's state of residency have entered into an interstate residency agreement providing for reciprocal residency status; i.e., when a similarly situated individual in either state would by written agreement between the states be considered a resident of the state in which he is actually residing.

(11) For other institutionalized individuals (i.e., those individuals who are both age twenty-one (21) or over and capable of indicating intent), the state of residence is Kentucky if the individual is residing in Kentucky with the intention to remain

permanently or for an indefinite period.

(12) Notwithstanding subsections (3) through (11) of this section, any individual placed by the cabinet in an institution in another state may, with appropriate preauthorization, be considered a resident of Kentucky, and any individual placed in an institution in Kentucky by another state shall not be considered a resident of Kentucky.

(13) An individual receiving a mandatory state supplemental payment from Kentucky shall be considered a resident of Kentucky so long as he/she continues to reside in Kentucky. An individual receiving a mandatory or optional supplemental payment from another state shall not be considered a resident of Kentucky.

(14) An individual eligible for and receiving a supplemental payment in October, 1979, shall be considered a Kentucky resident through July 4, 1984, even if he/she does not meet the residency requirements specified in this section, so long as such individual continues to reside in Kentucky and his/her receipt of supplementary payments has not since October, 1979 been interrupted by a period of ineligibility.

(15) Notwithstanding the preceding provisions of this section, a former Kentucky resident who becomes incapable of indicating intent while residing out of this state shall be considered a Kentucky resident if he/she returns to this state and he/she has a guardian, parent or spouse residing in this state. Such individual shall not be considered a Kentucky resident on the basis of this subsection whenever, subsequent to that time, he/she leaves this state to reside in another state except when the provisions of subsection (11) of this section are met. An individual leaving the state may, however, reestablish Kentucky residency by returning to the state if he has a guardian, parent or spouse residing in this state.

MIKE ROBINSON, Commissioner

HARRY J. COWHERD, M.D., Secretary

APPROVED BY AGENCY: December 5, 1988

FILED WITH LRC: December 8, 1988 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 23, 1989 at 9 a.m. at Health Services Auditorium. Individuals interested in attending this hearing shall notify this agency in writing by January 18, 1989, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street - 4 West, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: James E. Randall, Director

(1) Type and number of entities affected: 6,750 recipients of State Supplementation.

(a) Direct and indirect costs or savings to those affected:

1. First year: Recipients in Personal Care Homes receive a \$22 increase per month.

2. Continuing costs or savings: Recipients in Family Care Homes receive a \$18 increase per month.

3. Additional factors increasing or decreasing costs (note any effects upon competition): Recipients in Caretaker situations receive the following increase: Single individual - \$15; Couple (one requiring care) - \$22; Couple (both requiring care) - \$24.

(b) Reporting and paperwork requirements:

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: Increase in cost of living for State Supplementation recipients.

1. First year: \$207,000 cost, already anticipated in the state budget.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements:

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative method assessed; set forth through department policy.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied? Yes

FEDERAL MANDATE COMPARISON

1. Federal statute or regulation constituting the federal mandate. None

2. State compliance standards. This amended regulation includes the 1989 cost-of-living increases, to place the state in compliance with federal SSI guidelines.

3. Minimum or uniform standards contained in the federal mandate. None

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. None.

CABINET FOR HUMAN RESOURCES

Department for Social Insurance
Division of Management & Development
(Proposed Amendment)

904 KAR 3:020. Eligibility requirements.

RELATES TO: KRS 194.050

STATUTORY AUTHORITY: KRS 194.050

NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer a Food Stamp Program as prescribed by the Food Stamp Act of 1977, as amended, and 7 CFR [Part] 270 through 280. KRS 194.050 provides that the secretary shall, by regulation, develop policies and operate programs concerned with the welfare of the citizens of the Commonwealth. This regulation sets forth the eligibility requirements used by the cabinet in the administration of the Food Stamp Program.

Section 1. Eligibility Requirements. In accordance with regulations promulgated by the Food and Nutrition Service (FNS), of the United States Department of Agriculture, national uniform standards of eligibility for the Food Stamp Program, composed of both financial and nonfinancial criteria, shall be utilized. Financial criteria shall consist of income and resource limitations. Nonfinancial criteria shall consist of certain technical factors. Participation in the program shall be limited to those households whose incomes are determined to be a substantial limiting factor in permitting them to obtain a more nutritious diet. The income eligibility standards are derived from the Office of Management and Budget's (OMB) nonfarm income poverty guidelines.

Section 2. Countable Income. All income from any source shall be counted, except income specifically excluded in Section 3 of this regulation, including but not limited to:

(1) Wages earned by a household member, including all wages received by a striker the day [month] prior to the [month of the] strike or wages received during the month of application, whichever is higher, in accordance with 7 CFR [Part] 273.1(g).

(2) The gross income of a self-employment enterprise, including the total gain from the sale of any capital goods or equipment related to the business, excluding the cost of doing business.

(3) Training allowance from vocational and rehabilitative programs recognized by federal, state or local governments, to the extent that they are not reimbursements.

(4) Payments under Title I (Volunteers in Service to America, University Year for Action, etc.) of the Domestic Volunteer Service Act of 1973 shall be considered earned income unless specifically excluded in 7 CFR [Part] 273.9(c)(10)(iii).

(5) The earned or unearned income of excluded household members as set forth in 904 KAR 3:035, Section 5(3).

(6) Assistance payments from federal or federally aided public assistance such as supplemental security income (SSI) or aid to families with dependent children (AFDC); general assistance (GA) programs, or other assistance programs based on need.

(7) Annuities; pensions; retirement; veteran's or disability benefits; worker's or unemployment compensation; strike pay; old-age, survivors, or social security benefits; foster care payments for children or adults; gross income minus the cost of doing business derived from rental property in which a household member is not actively engaged in the management of the property at least twenty (20) hours a week.

(8) Wages earned by a household member which are garnished or diverted by an employer and

paid to a third party for a household expense.

(9) Support or alimony payments made directly to the household from nonhousehold members. This includes [and/or] any portion of such payments returned to the household by the cabinet.

(10) Such portion of scholarships, educational grants, fellowships, deferred payment loans for education, veterans educational benefits and the like which are not excludable under Section 3(6) of this regulation.

(11) Payments from government sponsored programs, dividends, interest, royalties, and all other direct money payments from any source which can be construed to be a gain or benefit.

(12) Monies withdrawn or dividends which are or could be received from a trust fund considered to be excludable under 7 CFR [Part] 273.8(e)(8) by a household, unless otherwise exempt under the provisions set forth in 7 CFR [Part] 273.9(c).

(13) That amount of monthly income of an alien's sponsor and the sponsor's spouse (if living with the sponsor) that has been deemed to be that of the alien in accordance with 7 CFR [Part] 273.11(h).

(14) Assistance monies from another program, as specified in 7 CFR 273.11(j), which are withheld for purposes of recouping an overpayment which resulted from the household's intentional failure to comply with that program's requirements. These withheld monies shall be considered as income in accordance with 7 CFR 273.11(j).

(15) Earnings to individuals who are participating in on-the-job training programs under the Job Training Partnership Act. This provision does not apply to household members under nineteen (19) years of age who are under the parental control of another adult member.

Section 3. Income Exclusions. The following payments shall not be considered as income:

(1) Money withheld from an assistance payment, earned income or other income source, or monies received from any income source which are voluntarily or involuntarily returned, to repay a prior overpayment received from that income source, provided the overpayment was not excludable in accordance with 7 CFR [Part] 273.9(c). However, monies withheld, as specified in Section 2, subsection (14) of this regulation shall not be excluded.

(2) Child support payments received by AFDC recipients which must be transferred to the division administering Title IV-D of the Social Security Act, as amended, to maintain AFDC eligibility. However, any portion of such monies returned to the household by the cabinet shall not be excluded.

(3) Any gain or benefit which is not in the form of money payable directly to the household.

(4) Money payments that are not payable directly to a household, but are paid to a third party for a household expense are excludable as a vendor payment as defined in 7 CFR 273.9(c).

(5) Any income in the certification period which is received too infrequently or irregularly to be reasonably anticipated, but not in excess of thirty (30) dollars in a quarter.

(6) As defined in 7 CFR 273.9(c), educational loans on which payment is deferred, grants, scholarships, fellowships, veteran educational benefits, and the like to the extent that they are made available [used] for tuition and

mandatory fees at an institution of post secondary education, including correspondence schools at that level, or a school at any level for the physically or mentally handicapped. Origination fees and insurance premiums on student loans are excludable charges. For federal education assistance programs funded under Title IV of the Higher Education Act or effective December 1, 1988, Student Assistance Programs under the Bureau of Indian Affairs, additional income exclusions include costs of books, travel, routine supplies, and cost for rental or purchase of equipment used for educational purposes. Portions of nonfederal (state, local, or private) deferred payment educational loans are excluded based on provisions contained in 7 CFR 273.9(c)(4).

(7) All loans, including loans from private individuals as well as commercial institutions, other than educational loans on which repayment is deferred.

(8) Reimbursements for past or future expenses to the extent they do not exceed actual expenses, and do not represent a gain or benefit to the household as defined in 7 CFR 273.9(c).

(9) Money received and used for the care and maintenance of a third party beneficiary who is not a household member.

(10) The earned income of children who are members of the household, who are students at least half time and who have not attained their 18th birthday.

(11) Money received in the form of a nonrecurring lump-sum payment.

(12) The cost of producing self-employment income. If the cost of producing farm self-employment income exceeds the income derived from self-employment farming as defined in 7 CFR [Part] 273.11(a), such losses shall be offset against any other countable income in the household.

(13) Any income specifically excluded by any other federal statute from consideration as income for the purpose of determining eligibility for the Food Stamp Program.

(14) Any energy assistance payments made under federal laws or certified as excludable energy payments by FNS.

(15) Any cash donations based on need received on or after February 1, 1988 from nonprofit charitable organizations, not to exceed \$300 in a federal fiscal quarter in accordance with 7 CFR 273.9(iv)(2).

(16) Foster care payments for foster children. This provision applies only when the household requests that the foster children be excluded from the household in determining eligibility (effective February 1, 1989).

(17) Up to \$12,000 to Aleuts and \$20,000 to individuals of Japanese ancestry for payments made by the U.S. to compensate for hardships experienced during World War II (effective February 1, 1989).

(18) Monies received under Section 3507 of the Internal Revenue Code (advanced payment of earned income credit).

Section 4. Income Eligibility Standards. Participation in the Food Stamp Program is limited to those households whose incomes fall at or below the applicable standards as established by FNS and which are set forth below:

(1) Households which contain a member who is elderly or disabled as defined in 904 KAR 3:010, Section 1(10) shall have their net income

compared to 100 percent of the federal income poverty guidelines.

(2) Households which are categorically eligible as defined in CFR 273.2 do not have to meet either the gross or net income eligibility standards.

(3) All other households shall have their gross income (total income after excluded income has been disregarded but before any deductions have been made) compared to 130 percent of the federal income poverty guidelines and their net income compared to 100 percent of the federal income poverty guidelines.

Section 5. Income Deductions. The following shall be allowable income deductions:

(1) A standard deduction per household per month. This standard shall be periodically adjusted by FNS to reflect changes in the cost of living for a prior period of time as determined by FNS.

(2) Twenty (20) percent of gross earned income.

(3) Payments for the actual cost for the care of a child or other dependent when necessary for a household member to seek, accept or continue employment or attend training or pursue education preparatory to employment. This deduction shall not exceed the child care maximum established by FNS.

(4) Monthly shelter cost in excess of fifty (50) percent of the household's income after all other allowable deductions have been made. The shelter deduction shall not exceed the excess shelter maximum established by FNS, except that households containing an elderly or disabled member shall not be subject to said maximum with [in] regard to the shelter deduction. The excess shelter maximum shall be adjusted periodically by FNS to reflect changes in the cost of living for a prior period of time. Allowable monthly shelter expenses shall be those expenses outlined in 7 CFR [Part] 273.9(d)(5). The cabinet shall develop a standard utility allowance for use in calculating shelter cost for those households which receive LIHEAP benefits or which incur heating/cooling (by air conditioning units only) costs separate and apart from their rent or mortgage payments in accordance with 7 CFR [Part] 273.9(d)(6). If the household is not entitled to the utility standard or does not choose to use the utility standard, it may claim actual utility expenses for any utility which it does pay separately. The standard utility allowance shall be adjusted at least annually to reflect changes in the cost of utilities.

(5) Allowable medical expenses, excluding special diets, in excess of thirty-five (35) dollars per month incurred by any household member who meets the definition of elderly or disabled, as set forth in 7 CFR [Part] 271.2, are those meeting the criteria set forth in 7 CFR [Part] 273.9(d)(3) including, but not limited to:

- (a) Medical and dental care;
- (b) Hospitalization or outpatient treatment and nursing care;
- (c) Medication and medical supplies;
- (d) Health and hospitalization premiums; and
- (e) Dentures, hearing aids, eyeglasses and prosthetics.

Section 6. Resources. Uniform national resource standards of eligibility shall be utilized. Eligibility shall be denied or

terminated if the total value of a household's liquid and nonliquid resources, not exempt under Section 7 of this regulation and in accordance with 7 CFR [Part] 273.8, exceed:

(1) \$3000: for all households with one (1) or more members, when at least one (1) member is sixty (60) years or older; or

(2) \$2000: for all other households.

(3) Households which are categorically eligible as defined in 7 CFR 273.2 shall be considered as having met the food stamp resource requirement.

Section 7. Exempt Resources. The following resources shall not be considered in determining eligibility:

(1) The home and surrounding property which is not separated from the home by intervening property owned by others.

(2) Household goods, personal effects including one (1) burial plot per household member, the cash value of life insurance policies and pension funds (except that Keogh plans which involve no contractual relationship with individuals who are not household members and Individual Retirement Accounts shall not be exempt), and prepaid burial plans if a contractual agreement for repayment must be signed in order to withdraw any funds.

(3) Licensed/unlicensed vehicles as specified in 7 CFR [Part] 273.8.

(4) Property which annually produces income consistent with its fair market value, even if only used on a seasonal basis.

(5) Property which is essential to the employment or self-employment of a household member, in accordance with 7 CFR [Part] 273.8(e)(5).

(6) Installment contracts for the sale of land or buildings if the contract or agreement is producing income consistent with its fair market value.

(7) Any governmental payments which are designated for the restoration of a home damaged in a disaster, if the household is subject to legal sanction if funds are not used as intended.

(8) Resources whose cash value is not accessible to the household.

(9) Resources which have been prorated as income.

(10) Indian lands held jointly with the tribe, or land that can be sold only with the approval of the Department of the Interior's Bureau of Indian Affairs; and

(11) Resources which are excluded for food stamp purposes by express provision of federal statute.

(12) Up to \$12,000 to Aleuts and \$20,000 to individuals of Japanese ancestry for payments made to the U.S. to compensate for hardships experienced during World War II (effective February 1, 1989).

Section 8. Transfer of Resources. Households which have transferred resources knowingly for the purpose of qualifying or attempting to qualify for food stamps shall be disqualified from participation in the program for up to one (1) year from the date of the discovery of the transfer in accordance with 7 CFR 273.8(i).

Section 9. Nonfinancial Criteria. Nonfinancial eligibility standards apply equally to all households and consist of:

(1) Residency. A household must live in the

county in which they make application;

(2) Identity. Applicant's identity will be verified; also, where an authorized representative applies for the household, both the applicant's and the authorized representative's identities will be verified;

(3) Citizenship and alien status. Program participation shall be limited to either citizens of the United States or eligible aliens, as outlined in 7 CFR [Part] 273.4. Individuals whose status is questionable shall be ineligible to participate until such status has been verified;

(4) Household size. Size of household will be verified through readily available documentary evidence or through a collateral contract; and

(5) Students. Persons aged eighteen (18) to sixty (60) who are physically and mentally fit and enrolled at least half time in an institution of higher education are ineligible to participate unless they meet criteria specified in 7 CFR [Part] 273.5.

(6) Mandatory monthly reporting (MMR). Households shall be required to file monthly reports in accordance with 7 CFR 273.21 [and any waivers thereto approved by FNS as a condition of eligibility,] unless otherwise exempted by the appropriate federal agency.

(7) Social security number (SSN). Households applying for or participating in the Food Stamp Program must comply with SSN requirements by providing the SSN of each household member or applying for one (1) prior to certification. Failure to comply without good cause shall be determined for each household member and shall result in such individual's disqualification from participation in the Food Stamp Program until this requirement is met.

(8) Work registration. All household members, except those exempt in 7 CFR [Part] 273.7(b), shall be required to register for work, accept suitable employment and be subject to other work registration requirements specified in 7 CFR [Part] 273.7. Strikers whose households are eligible in accordance with 904 KAR 3:035, Section 5(9), shall be subject to the work registration requirements unless exempt for reasons other than employment at the time of application.

(9) Quality Control. Refusal to cooperate in completing a quality control review shall result in termination of the participating household's benefits.

Section 10. Provisions contained in this regulation shall become effective January 1, 1989 [September 1, 1987] unless otherwise specified.

MIKE ROBINSON, Commissioner

HARRY J. COWHERD, M.D., Secretary

APPROVED BY AGENCY: December 13, 1988

FILED WITH LRC: December 15, 1988 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 23, 1989 at 9 a.m. at Health Services Auditorium. Individuals interested in attending this hearing shall notify this agency in writing by January 18, 1989, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed

administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street - 4 West, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: James E. Randall, Director

(1) Type and number of entities affected: Approximately 7,100 HEAP recipients live in subsidized housing and their rent includes utility expenses. As a result of this amendment, these households are now entitled to the Standard Utility Allowance deduction. No data is available for determining the number of households which receive cash donations based on need from nonprofit charitable organizations. Also, the number of food stamp recipients expected to receive student assistance income from the Bureau of Indian Affairs and the number of foster care children in food stamp cases are unknown. Kentucky currently has no Aleuts or individuals of Japanese ancestry who have received excludable payments from the U.S.

(a) Direct and indirect costs or savings to those affected:

1. First year: Approximately 7,100 food stamp recipients are entitled to increased food stamp benefits as a result of eligibility for LIHEAP benefits. The additional Standard Utility Allowance deduction will result in a greater allotment. Since this policy is reviewed at each food stamp application, reapplication and recertification, the change will affect most (if not all) of these HEAP recipients.

2. Continuing costs or savings: Same as first year.

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: Insignificant

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: None. Food stamp coupons are 100% federally funded. Therefore, the state will not incur any additional costs as a result of implementing these amendments.

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Insignificant

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: None

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

None

TIERING: Was tiering applied? No. Eligibility conditions for food stamps must be applied on a consistent and equitable basis in accordance with federal regulations.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate.

Public Law 100-50

7 CFR 273.9(c)(2), Federal Register 6/15/88

7 CFR 273.9(d)(17), FNS/SERO Regulations Supplement 88-9

Public Law 100-383

Vermont: Foster vs. USDA, Court of Appeals, 2nd Circuit, 6-24-88

Hunger Prevention Act of 1988 (Section 402)

2. State compliance standards.

This regulation allows additional student assistance income exclusions, provides a food stamp utility deduction for LIHEAP recipients and excludes certain cash donations based on need. Also, exclusionary provisions are granted to persons who receive foster care payments for foster children, payments from the U.S. to individuals of Japanese ancestry and Aleuts and income under Section 3507 of the Internal Revenue Service Code.

3. Minimum or uniform standards contained in the federal mandate.

The federal regulations allow students who receive income from the Bureau of Indian Affairs to receive deductions similar to those granted to recipients of Title IV income under the Higher Education Act. The federal regulations also provide an exclusionary provision for cash donations based on need of \$300 or less per quarter, if the money is received from a nonprofit charitable organization. In addition, food stamp recipients who receive income from LIHEAP are assumed to have expended the funds for heating/cooling costs and are, therefore, entitled to such a deduction in computing their food stamp allotments. Also, an income exclusion is allowed for monies received under Section 3507 of the Internal Revenue Service Code (advance payment of earned income credit). Effective February 1, 1989, income and resource exclusions are provided to individuals of Japanese ancestry and to Aleuts for payments made by the U.S. to compensate for hardships encountered during World War II. Effective February 1, 1989, an income exclusion is granted for foster care payments for foster children.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate?

No. The provisions of this administrative regulation coincide with those mandated by the Food and Nutrition Service. The guidelines for these provisions are specific with respect to the application of these policy amendments.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements.

This administrative regulation will not impose any stricter requirements or any additional or different responsibilities than those required by the federal mandate.

CABINET FOR HUMAN RESOURCES Department for Social Services Division of Aging Services (Proposed Amendment)

905 KAR 8:110. Homecare fee schedule for the elderly.

RELATES TO: KRS 205.460

STATUTORY AUTHORITY: KRS 194.050

NECESSITY AND FUNCTION: KRS 205.460 directs the Cabinet for Human Resources to fund directly or through a contracting entity or entities, in each district, a program of essential services for the elderly. KRS 205.460 also provides that the cabinet shall adopt a fee schedule based upon the elderly person's ability to pay for essential services. The function of this regulation is to set forth the manner in which fees shall [are to] be assessed and collected.

Section 1. Definitions. (1) "Family" means only the client and spouse and any minor children of either client or spouse.

(2) "Extraordinary expenses" means medical or medical-related expenses, or other expenses reasonable and necessary to maintain a safe and decent standard of living for the individual or the household.

Section 2. [1.] Schedule of Fees. The following schedule, revised March 1, 1989 [October 1, 1986], shall be utilized in determining the amount of fee which shall [to] be charged an eligible individual who has received homecare services. The cost of the service unit as determined by the state or contracting entity in accordance with its contract shall [is to] be multiplied by the applicable percentage rate based upon income and size of family as set forth below.

Homecare Client Income and Applicable Percentage of Fee

<u>Annual Income</u>	<u>1 Person</u>	<u>2 Persons</u>
<u>\$ 8,000 and below</u>	<u>0%</u>	<u>0%</u>
<u>\$ 8,001 - \$9,900</u>	<u>20%</u>	<u>0%</u>
<u>\$ 9,901 - \$11,800</u>	<u>40%</u>	<u>20%</u>
<u>\$11,801 - \$13,700</u>	<u>60%</u>	<u>40%</u>
<u>\$13,701 - \$15,600</u>	<u>80%</u>	<u>60%</u>
<u>\$15,601 - \$17,500</u>	<u>100%</u>	<u>80%</u>
<u>\$17,501 - \$19,400</u>		<u>100%</u>
<u>For each additional family member, add \$1,900.</u>		

[Applicable Percentage by Size of Family]

<u>Annual Income</u>	<u>1</u>	<u>2</u>
<u>7,000 and below</u>	<u>0%</u>	<u>0%</u>
<u>7,001 - 8,000</u>	<u>20%</u>	<u>0%</u>
<u>8,001 - 9,000</u>	<u>40%</u>	<u>20%</u>
<u>9,001 - 10,000</u>	<u>60%</u>	<u>20%</u>
<u>10,001 - 11,000</u>	<u>80%</u>	<u>40%</u>
<u>11,001 - 12,000</u>	<u>100%</u>	<u>60%</u>
<u>12,001 - 13,000</u>		<u>80%</u>
<u>13,001 - 14,000</u>		<u>80%</u>
<u>14,001 - 15,000</u>		<u>100%</u>

Section 3. [2.] Extraordinary [Medical] Expense Deduction. In determining the eligible individual's ability to pay a fee in accordance with Section 2 [1] of this regulation, any extraordinary medical or other expense may be taken into consideration. Examples of

extraordinary expenses other than medical are: the cost of special schools or care for a mentally or physically disabled minor dependent child, custodial care or other supportive services needed by client or spouse who is an Alzheimer's victim, repair to the roof, plumbing, heating or cooling system of the home, and burial expenses for a spouse or minor dependent child. [For the purpose of this regulation, extraordinary medical expenses means medical or medical-related expenses, including the cost of prescription drugs, which severely affects the income of the individual or the household.]

Section 4. [3.] Needy Aged. In no event shall a fee be assessed an eligible individual who meets the definition of "needy aged" as set forth in KRS 205.010(6).

Section 5. [4.] SSI Recipients. SSI income shall not be [is not] deemed available to other family members. When an applicant is receiving SSI benefits, he shall be [/she is to be] considered a family of one (1) for the purpose of fee determination.

LARRY MICHALCZYK, Commissioner
HARRY J. COWHERD, M.D., Secretary

APPROVED BY AGENCY: December 6, 1988

FILED WITH LRC: December 14, 1988 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation will be held on January 23, 1989 at 9 a.m. in the Department for Health Services Auditorium, 275 East Main Street, Frankfort, Kentucky. Those interested in attending this hearing shall notify in writing the following office by January 18, 1989: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street - 4 West, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Linda Snodgrass

(1) Type and number of entities affected: Approximately 475 homecare clients.

(a) Direct and indirect costs or savings to those affected: The revised regulation will exempt about 200 of those who were required to pay a fee and will reduce the fee charged to approximately 100 others.

1. First year: Approximately \$30,000.

2. Continuing costs or savings: Approximately \$25,000 per year.

3. Additional factors increasing or decreasing costs (note any effects upon competition): A small savings will be realized through reducing the subcontractors' responsibility for generating bills.

(b) Reporting and paperwork requirements: About 200 clients per year will no longer have to be billed for homecare services.

(2) Effects on the promulgating administrative body: There will be no effects on the promulgating administrative body due to the fact these services are provided by contracting agencies.

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements:

(3) Assessment of anticipated effect on state

and local revenues: Local revenues may be reduced by approximately \$10,000 per year due to a slightly larger number of recipients who are expected to be exempt from obligation to pay.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Alternative is to make no charge for homecare services; however, it is believed that persons who are able to make payments toward the cost of care should do so.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no statutes, regulations, etc. that have been identified to be in conflict, overlapping or duplicated.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: There is no additional information or comments.

TIERING: Was tiering applied? No. Financial obligation toward program cost is only appropriate when applied uniformly statewide.

CABINET FOR HUMAN RESOURCES Department for Medicaid Services (Proposed Amendment)

907 KAR 1:010. Payment for physicians' services.

RELATES TO: KRS 205.550, 205.560

STATUTORY AUTHORITY: KRS 194.050

NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer a program of Medical Assistance under Title XIX of the Social Security Act. KRS 205.550 and 205.560 require that the secretary prescribe the methods for determining costs for vendor payments for medical care services. This regulation sets forth the method for establishing payment for physician services.

[Section 1. Amount of Payment. Payment for covered services rendered to eligible medical assistance recipients is based on the physicians' usual, customary, reasonable and prevailing charges.]

Section 1. [2.] Definitions. For purposes of determination of payment:

(1) Usual and customary charge refers to the uniform amount the individual physician charges in the majority of cases for a specific medical procedure or service.

(2) Prevailing charge refers to those charges which fall within the range of charges as computed by the use of a predetermined and established statistical percentile. Prevailing charges for each medical procedure are derived from the overall pattern existing within the state.

Section 2. Amount of Payment. Payment for covered services rendered to eligible medical assistance recipients is based on the physicians' usual, customary, reasonable and prevailing charges.

Section 3. Method and Source of Information on Charges. (1) Effective October 1, 1981, the

individual fee profiles for participating physicians were generated from historical data accumulated from charges submitted and processed by the medical assistance program during all of calendar year 1980.

(2) Effective October 1, 1981, the Title XIX prevailing fee maximums were generated from the same historical data as referenced in subsection (1) of this section.

(3) Effective October 1, 1981, the Title XVIII, Part B, current reasonable charge profiles were utilized by the medical assistance program.

(4) Effective October 1, 1981, the Title XVIII, Part B, current prevailing charge data was utilized by the medical assistance program.

(5) Percentile.

(a) The Title XIX prevailing charges were established by utilizing the statistical computation of the 75th percentile.

(b) The Title XVIII, Part B, prevailing charges were established by utilizing the statistical computation of the 75th percentile.

Section 4. Maximum Reimbursement for Covered Procedures. (1) Reimbursement for covered procedures is limited to the lowest of the following:

(a) Actual charge for service rendered as submitted on billing statement;

(b) The physician's median charge for a given service derived from claims processed or from claims for services rendered during all of the calendar year preceding the start of the fiscal year in which the determination is made.

(2) In no case may payment exceed the prevailing charge established under Part B, Title XVIII for similar service on a statewide basis.

(3) In instances where a prevailing charge has not been established for a specific medical procedure by Part B, Title XVIII, the prevailing charge established under Title XIX is utilized as the maximum allowable fee.

(4) The upper limit for new physicians shall not exceed the 50th percentile.

(5) The amount otherwise payable for outpatient services, as determined in accordance with Sections 1 through 3 of this regulation and subsections (1) through (4) of this section, shall be reduced by five (5) percent to arrive at the final payment amount.

(6) Effective with regard to services provided on or after October 1, 1988, physicians will be allowed to secure drugs for specified immunizations identified in 907 KAR 1:009 free from the Department for Health Services to provide immunizations for Medicaid recipients, with reimbursement for the cost of the drugs made from the Department for Medicaid Services to the Department for Health Services upon receipt of notice from the physicians that the drugs were used to provide immunizations to Medicaid recipients.

(7) Effective with regard to services provided on or after October 1, 1988, physicians will be allowed to purchase drugs for specified immunizations identified in 907 KAR 1:009 in the open market to provide immunizations for Medicaid recipients and the Department for Medicaid Services will reimburse the physician the same amounts that would have been paid to the Department for Health Services if the drugs had been obtained through that agency upon receipt of appropriate notice that the drugs

were used to provide immunizations to Medicaid recipients.

Section 5. Exceptions. Exceptions to reimbursement as outlined in the above [foregoing] sections are as follows:

(1) Reimbursement for physician's services provided to inpatients of hospitals is made on the basis of 100 percent reimbursement per procedure for the first twenty (20) dollars of allowable reimbursement and on the basis of a percentage of the physician's usual, customary and reasonable charge in excess of twenty (20) dollars per procedure, after the appropriate prevailing fee screens are applied. The percentage rate applied to otherwise allowable reimbursement in excess of twenty (20) dollars per procedure is established at thirty-five (35) percent. The percentage rate will be reviewed periodically and adjusted according to the availability of funds.

(2) Payments for specified obstetrical services provided on or after November 1, 1987, shall be at the lower of the actual billed charge or the following flat rates: for board certified obstetricians, normal delivery and cesarean section, \$650; for all other physicians, normal delivery, and cesarean section, \$550.

(3) For inpatient delivery-related anesthesia services provided on or after December 1, 1988, a physician will be reimbursed the lesser of the actual billed charge or a standard fixed fee paid by type of procedure. Those procedures and standard fixed fees are:

Normal delivery	\$200
Low cervical c-section	270
Classic c-section	320
Epidural single	315
Epidural continuous	335
Extraperitoneal c-section	320
C-section with hysterectomy, subtotal	320
C-section with hysterectomy, total	320

(4) [(3)] Payment for individuals eligible for coverage under Title XVIII, Part B, Supplementary Medical Insurance, is made in accordance with Sections 1 through 4 of this regulation and subsections (1) and (2) of this section within the individual's deductible and coinsurance liability.

ROY BUTLER, Commissioner

HARRY J. COWHERD, M.D., Secretary

APPROVED BY AGENCY: November 28, 1988

FILED WITH LRC: December 1, 1988 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 23, 1989 at 9 a.m. at Health Services Auditorium. Individuals interested in attending this hearing shall notify this agency in writing by January 18, 1989, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written

notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street - 4 West, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Roy Butler

(1) Type and number of entities affected: All participating physicians who provide immunizations or anesthesiologists services may be effected.

(a) Direct and indirect costs or savings to those affected: None

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements:

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Immunization change (cost) - \$940,000*; anesthesiologist change (cost) - \$650,000.

2. Continuing costs or savings: Immunization change (cost) - \$940,000*; anesthesiologist change (cost) - \$650,000.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives were identified.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: *It is anticipated this expenditure would have been incurred in the preventive health services program in the absence of this action.

TIERING: Was tiering applied? No. Federal Medicaid regulations require that similarly situated providers be treated in a similar manner.

Section 1. Payments. Participating nurse anesthetists shall be paid at the rate of seventy-five (75) percent of the anesthesiologist's allowable charge for the same procedure under the same conditions, or at actual billed charges if less.

Section 2. Exceptions. For inpatient delivery-related anesthesia services provided on or after December 1, 1988, a nurse-anesthetist will be reimbursed the lesser of the actual billed charge or the standard fixed fee paid by type of procedure. Those procedures and fixed fees are:

Normal delivery	\$150.00
Low cervical c-section	202.50
Classic c-section	240.00
Epidural single	236.00
Epidural continuous	251.25
C-section with hysterectomy, subtotal	240.00
C-section with hysterectomy, total	240.00
Extraperitoneal c-section	240.00

ROY BUTLER, Commissioner

HARRY J. COWHERD, M.D., Secretary

APPROVED BY AGENCY: November 28, 1988

FILED WITH LRC: December 1, 1988 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 23, 1989 at 9 a.m. at Health Services Auditorium. Individuals interested in attending this hearing shall notify this agency in writing by January 18, 1989, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street - 4 West, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Roy Butler

(1) Type and number of entities affected: All nurse anesthetists which participate in the Medicaid program.

(a) Direct and indirect costs or savings to those affected: None

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: \$100,000 (cost).

2. Continuing costs or savings: \$100,000 (cost).

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services
(Proposed Amendment)

907 KAR 1:210. Payments for nurse anesthetists' services.

RELATES TO: KRS 205.520

STATUTORY AUTHORITY: KRS 194.050

NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the program of Medical Assistance in accordance with Title XIX of the Social Security Act. KRS 205.520 empowers the cabinet, by regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This regulation sets forth the method for determining amounts payable by the cabinet for nurse anesthetists' services.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: Viable alternatives were not identified.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. Federal Medicaid regulations require that similarly situated providers be treated in a similar manner.

PROPOSED REGULATIONS RECEIVED THROUGH DECEMBER 15, 1988

PERSONNEL BOARD

101 KAR 1:305. Repeal of previous regulations.

RELATES TO: KRS 18A.075, 18A.0751

STATUTORY AUTHORITY: KRS Chapter 13A, 18A.075

NECESSITY AND FUNCTION: KRS 18A.075 requires the Personnel Board to promulgate administrative regulations consistent with the provisions of KRS 18A.005 to 18A.200. KRS 18A.0751 specifies the subjects which these administrative regulations are to address. The board has also filed new regulations to replace the regulations identified in Section 1 of this regulation. The regulations in Section 1 of this regulation contain statutory language and are being replaced by the filing of new administrative regulations minus such language to comply with the provisions of KRS Chapter 13A.

Section 1. The following administrative regulations are hereby repealed: 101 KAR 1:310, Personnel board meetings; 101 KAR 1:320, Probationary period; 101 KAR 1:330, Employee actions; 101 KAR 1:340, Disciplinary actions; 101 KAR 1:350, Right of appeal; 101 KAR 1:360, Appeal procedures; 101 KAR 1:370, Employee grievances; 101 KAR 1:380, Personnel board investigations; 101 KAR 1:390, Restoration from military duty.

ARTHUR HATTERICK, JR., Secretary

APPROVED BY AGENCY: December 9, 1988

FILED WITH LRC: December 13, 1988 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 24, 1989 at 8:30 a.m. in Room 360, Capitol Annex Building. Individuals interested in attending this hearing shall notify this agency in writing by January 19, 1989, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Personnel Board, Room 372, Capitol Annex Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Arthur Hatterick, Jr.

(1) Type and number of entities affected: All state agencies with classified and unclassified employees.

(a) Direct and indirect costs or savings to those affected: None

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body: None

(a) Direct and indirect costs or savings: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: None

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None

(6) Any additional information or comments: The repeal of the current administrative regulations which currently includes some statutory language is for the purpose of satisfying the requirements of KRS Chapter 13A prohibiting the repeating of statutory language in administrative regulations.

TIERING: Was tiering applied? No. Tiering has not been utilized in the administrative regulations of the Personnel Board in that the board is a quasi-judicial body and as such has no latitude not granted by statute to utilize tiering methods outlined in KRS 13A.210.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. The only affect this regulation has on local government is that the current administrative regulations relating to restoration of employees from military duty and appeal procedures are being repealed and new regulations are replacing them. There is no material change with the exception of the deletion of statutory language.

3. State the aspect or service of local government to which this administrative regulation relates. See No. 2.

4. How does this administrative regulation affect the local government or any service it provides? See No. 2.

PERSONNEL BOARD

101 KAR 1:315. Personnel Board meetings.

RELATES TO: KRS 18A.070

STATUTORY AUTHORITY: KRS Chapter 13A, 18A.070, 18A.075, 18A.0751

NECESSITY AND FUNCTION: KRS 18A.045 establishes the Personnel Board, its procedures, duties and responsibilities. This regulation will replace 101 KAR 1:310 which includes repetition of statutory language which is being repealed.

Section 1. Meetings. Regular meetings of the board shall normally be held on the second Friday of each month. Any request to address the board shall be subject to the discretion of the board, except as provided in KRS 18A.095(22)(b)1.

Section 2. Chairman. At the regular meeting in January of each year, the board shall elect one (1) member to act as chairman and one (1) member to act as vice chairman for a term of one (1) year, or until successors are duly elected. If the office of chairman or vice chairman is vacated because of death, resignation, or any other manner, before the expiration of term, the board shall elect at the next meeting a successor who shall serve for the unexpired term.

Section 3. Conduct of Meetings. Meetings of the board may be informal, subject to procedures as may be directed by the chairman.

ARTHUR HATTERICK, JR., Secretary

APPROVED BY AGENCY: December 9, 1988

FILED WITH LRC: December 13, 1988 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 24, 1989 at 8:30 a.m. in Room 360, Capitol Annex Building. Individuals interested in attending this hearing shall notify this agency in writing by January 19, 1989, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Personnel Board, Room 372, Capitol Annex Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Arthur Hatterick, Jr.

(1) Type and number of entities affected: All state agencies with classified and unclassified employees.

(a) Direct and indirect costs or savings to those affected: None

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body: None

(a) Direct and indirect costs or savings: None

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: None

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None

(6) Any additional information or comments: The repeal of the current administrative regulations which currently includes some statutory language is for the purpose of satisfying the requirements of KRS Chapter 13A prohibiting the repeating of statutory language in administrative regulations.

TIERING: Was tiering applied? No. Tiering has not been utilized in the administrative regulations of the Personnel Board in that the board is a quasi-judicial body and as such has no latitude not granted by statute to utilize tiering methods outlined in KRS 13A.210.

PERSONNEL BOARD

101 KAR 1:335. Employee actions.

RELATES TO: KRS 18A.075, 18A.0751, 18A.115

STATUTORY AUTHORITY: KRS Chapter 13A, 18A.075

NECESSITY AND FUNCTION: KRS 18A.075 requires the Personnel Board to promulgate comprehensive administrative regulations consistent with the provisions of KRS 18A.005 to 18A.200. KRS 18A.0751 directs that comprehensive administrative regulations be promulgated by the Personnel Board for the classified service governing promotion, demotion, transfer, reinstatement and reemployment. KRS 18A.115 relates to promotion of career employees. This regulation will replace 101 KAR 1:330 which includes repetition of statutory language which is being repealed.

Section 1. Definitions; Work Station. (1) The official work station of employees assigned to an office is the street address where the office is located.

(2) The official work station of a field employee is that address to which the employee is assigned at the time of appointment to the employee's current position.

Section 2. Promotion. (1) Promotions may be interagency or intra-agency.

(2) Any employee in the classified service, other than a career employee, may be promoted to a position in the unclassified service, but shall not have reversion rights to any position in the classified service. Any employee, other than a career employee, who was promoted or otherwise changed, with no break in service, from a position in the classified service to a position in the unclassified service prior to July 15, 1986, shall retain reversion rights as existed at the time of promotion or other action.

Section 3. Demotion. (1) Demotions for cause shall be intra-agency only.

(2) If an employee with status requests in writing that he be demoted, the appointing authority may make a voluntary demotion. The written request shall be on a form prescribed by the Commissioner of Personnel and shall include a statement of the reason for the request, the effective date of the demotion, identifying information concerning the position demoted from and to, and a waiver of the right of appeal concerning the demotion. A copy of the request shall be forwarded to the Commissioner of Personnel.

(3) Voluntary demotions may be interagency or intra-agency.

Section 4. Transfers. (1) An employee with status may be transferred from one department to another department.

(2) Transfers may be on a voluntary or involuntary basis. Unless an employee requests a transfer in writing, such transfer shall be deemed to have been made on an involuntary basis. The appointing authority shall establish a reasonable basis for selecting an employee for involuntary transfer.

(3) If the transfer is on an involuntary basis, the employee shall receive notice of his transfer prior to the effective date of transfer. Following notification of an involuntary transfer, an employee shall report for work at the position to which transferred on the effective date of the transfer. The notice shall be in writing, shall state the effective date of the transfer, the reason for the transfer and the employee's selection for transfer, and the employee's obligation to report to the new position. The notice shall also advise the employee that he has the right to appeal the transfer to the board within thirty (30) days of receipt of the notice, excluding the day that he received notification. When the employee is notified, copies of the notice shall be forwarded to the Commissioner of Personnel.

(4) If an involuntary transfer is to a position with a work station in a different county, the employee shall receive the notice specified in subsection (3) of this section at least thirty (30) days prior to the effective date of the transfer. The appointing authority shall pay the employee's travel expenses following transfer for up to thirty (30) days following the effective date of transfer, in accordance with administrative regulations relating to reimbursement of travel expenses, and shall pay the employee's moving expenses, if any. The notice specified in subsection (3) of this section shall advise the employee of these provisions.

(5) Involuntary transfers shall be intra-agency only.

(6) If an employee with status requests in writing that he be transferred, the appointing authority may make a voluntary transfer. The written request shall be on a form prescribed by the Commissioner of Personnel and shall include a statement of the reason for the request, the effective date of the transfer, identifying information concerning the position transferred from and to, and a waiver of the right to appeal concerning the transfer. A copy of this request shall be forwarded to the Commissioner of Personnel.

(7) Voluntary transfers may be interagency or intra-agency.

Section 5. Reinstatement. (1) An employee with status who resigned in good standing may be reinstated to an existing vacant position in his former job classification, or in any job classification having the same or lower salary range as that currently assigned to the employee's former job classification for which he is qualified.

(2) Reinstatement may be made upon request of the appointing authority and with the prior approval of the Commissioner of Personnel. Approval shall include a finding that the candidate for reinstatement meets the current qualifications for the former job

classification. If the reinstatement is to a different job classification, the candidate shall pass the appropriate examination prior to reinstatement unless the employee has previously had status in that job classification.

Section 6. Reemployment. The Department of Personnel shall assist the laid-off employee in determining for which job classifications he is qualified.

ARTHUR HATTERICK, JR., Secretary

APPROVED BY AGENCY: December 9, 1988

FILED WITH LRC: December 13, 1988 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 24, 1989 at 8:30 a.m. in Room 360, Capitol Annex Building. Individuals interested in attending this hearing shall notify this agency in writing by January 19, 1989, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Personnel Board, Room 372, Capitol Annex Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Arthur Hatterick, Jr.

(1) Type and number of entities affected: All state agencies with classified employees.

(a) Direct and indirect costs or savings to those affected: None

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body: None

(a) Direct and indirect costs or savings: None

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: None

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. This regulation must apply to all classified employees and all state agencies with classified

employees. Further tiering has not been utilized in the administrative regulations of the Personnel Board in that the board is a quasi-judicial body and as such has no latitude not granted by statute to utilize tiering methods outlined in KRS 13A.210.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The rules concerning standards for the establishment and maintenance of a merit system for state governmental units receiving federal grants in aid were issued by the Office of Personnel Management and became effective on February 9, 1979. These rules were revised April 4, 1983, and are now codified as 5 CFR, Part 900, Subpart F, Sections 900.601-900.606 (48 F.R. 9209, March 4, 1983).

2. State compliance standards. The purpose of these regulations is to implement provisions of Title II of the Intergovernmental Personnel Act of 1970, as amended, relating to federally required merit personnel systems in state agencies. Certain federal grant programs require, as a condition of eligibility, that state agencies that receive grants establish merit personnel systems for their personnel engaged in administrative of the grant-aided program. These merit personnel systems are in some cases required by specific federal grant statutes and in some cases required by specific federal grant statutes and in other cases are required by regulations of the federal grantor agencies.

3. Minimum or uniform standards contained in the federal mandate. The standards required for a merit system of personnel administration include such merit principles as:

(a) Recruiting, selecting, and advancing employees on the basis of their relative ability, knowledge, and skills, including open consideration of qualified applicants for initial appointment.

(b) Providing equitable and adequate compensation.

(c) Training employees, as needed, to assure high quality performance.

(d) Retaining employees on the basis of the adequacy of their performance, correcting inadequate performance, and separating employees whose inadequate performance cannot be corrected.

(e) Assuring fair treatment of applicants and employees in all aspects of personnel administration without regard to political affiliation, race, color, national origin, sex, religious creed, age or handicap and with proper regard for their privacy and constitutional rights as citizens. This "fair treatment" principle includes compliance with the federal equal employment opportunity and nondiscrimination laws.

(f) Assuring that employees are protected against coercion for partisan political purposes and are prohibited from using their official authority for the purpose of interfering with or affecting the result of an election or a nomination for office.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The provisions of the federal merit standards recognizes fully the rights, powers and responsibility of state government and

encourages innovation and allows for diversity in the design, execution and management of the system of personnel management, as provided by the Intergovernmental Personnel Act of 1970 if standards have certain specific requirements and options. The requirements and options have been exercised by the General Assembly in the enactment of KRS Chapter 18A and its delegation of duties and responsibilities to the State Personnel Board and the Department of Personnel.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This regulation to our knowledge is not stricter than the federal mandate.

PERSONNEL BOARD

101 KAR 1:345. Disciplinary actions.

RELATES TO: KRS 18A.020, 18A.075, 18A.0751, 18A.095

STATUTORY AUTHORITY: KRS Chapter 13A, 18A.0751

NECESSITY AND FUNCTION: KRS 18A.075 requires the Personnel Board to promulgate comprehensive administrative regulations consistent with the provisions of KRS 18A.005 to 18A.200. KRS 18A.0751 specifies that the Personnel Board promulgate comprehensive administrative regulations for the classified service governing dismissals, suspensions, fines and other disciplinary measures. KRS 18A.095 relates specifically to dismissals, suspensions and other penalizations. KRS 18A.020 relates, in part, to written reprimands. This regulation will replace 101 KAR 1:340 which includes repetition of statutory language which is being repealed.

Section 1. General Provision. Appointing authorities may discipline employees for lack of good behavior or the unsatisfactory performance of duties.

Section 2. Dismissal. (1) The notice required by KRS 18A.095(6) and (7) may be combined provided all requirements are satisfied.

(2) When the employee is notified, copies of the notice of intent to dismiss and the notice of dismissal or other penalization shall be forwarded to the Commissioner of Personnel on the same date notice is delivered to the employee.

Section 3. Demotion. When the employee is notified, copies of the notice of demotion shall be forwarded to the Commissioner of Personnel on the same date notice is delivered to the employee.

Section 4. Suspension. (1) A suspension shall not exceed thirty (30) working days.

(2) An employee without status may also be suspended for a period not to exceed thirty (30) days and shall be entitled to the same provisions of notice contained in KRS 18A.095(8) with the exception of the right of appeal.

(3) When the employee is notified, copies of the notice of suspension shall be forwarded to the Commissioner of Personnel on the same date notice is delivered to the employee.

Section 5. Disciplinary Fine. (1) A disciplinary fine shall not exceed ten (10) days

pay. The fine shall be computed on the basis of the employee's current salary.

(2) Prior to imposition of a disciplinary fine, the employee shall be notified by the appointing authority in writing of the amount of the fine, the manner of imposing the fine, and the pay period or periods from which the fine will be deducted.

(3) An employee without status may also be fined for a period not to exceed ten (10) days and shall be entitled to the same provisions of notice contained in KRS 18A.095(8) with the exception of the right of appeal.

(4) When the employee is notified, copies of the notice of disciplinary fine shall be forwarded to the Commissioner of Personnel on the same date notice is delivered to the employee.

Section 6. Written Reprimand. An employee may be given a written reprimand preliminary to a disciplinary action. The reprimand may be issued by the appointing authority or his designee, an intermediate supervisor, a division director, or the employee's immediate supervisor.

ARTHUR HATTERICK, JR., Secretary

APPROVED BY AGENCY: December 9, 1988

FILED WITH LRC: December 13, 1988 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 24, 1989 at 8:30 a.m. in Room 360, Capitol Annex Building. Individuals interested in attending this hearing shall notify this agency in writing by January 19, 1989, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Personnel Board, Room 372, Capitol Annex Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Arthur Hatterick, Jr.

(1) Type and number of entities affected: All state agencies with classified employees.

(a) Direct and indirect costs or savings to those affected: None

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body: None

(a) Direct and indirect costs or savings: None

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: None

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None

(6) Any additional information or comments: The repeal of the current administrative regulations which currently includes some statutory language is for the purpose of satisfying the requirements of KRS Chapter 13A prohibiting the repeating of statutory language in administrative regulations.

TIERING: Was tiering applied? No. Tiering has not been utilized in the administrative regulations of the Personnel Board in that the board is a quasi-judicial body and as such has no latitude not granted by statute to utilize tiering methods outlined in KRS 13A.210.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The rules concerning standards for the establishment and maintenance of a merit system for state governmental units receiving federal grants in aid were issued by the Office of Personnel Management and became effective on February 9, 1979. These rules were revised April 4, 1983, and are now codified as 5 CFR, Part 900, Subpart F, Sections 900.601-900.606 (48 F.R. 9209, March 4, 1983).

2. State compliance standards. The purpose of these regulations is to implement provisions of Title II of the Intergovernmental Personnel Act of 1970, as amended, relating to federally required merit personnel systems in state agencies. Certain federal grant programs require, as a condition of eligibility, that state agencies that receive grants establish merit personnel systems for their personnel engaged in administrative of the grant-aided program. These merit personnel systems are in some cases required by specific federal grant statutes and in some cases required by specific federal grant statutes and in other cases are required by regulations of the federal grantor agencies.

3. Minimum or uniform standards contained in the federal mandate. The standards required for a merit system of personnel administration include such merit principles as:

(a) Recruiting, selecting, and advancing employees on the basis of their relative ability, knowledge, and skills, including open consideration of qualified applicants for initial appointment.

(b) Providing equitable and adequate compensation.

(c) Training employees, as needed, to assure high quality performance.

(d) Retaining employees on the basis of the adequacy of their performance, correcting inadequate performance, and separating employees whose inadequate performance cannot be corrected.

(e) Assuring fair treatment of applicants and employees in all aspects of personnel administration without regard to political affiliation, race, color, national origin, sex, religious creed, age or handicap and with proper regard for their privacy and constitutional

rights as citizens. This "fair treatment" principle includes compliance with the federal equal employment opportunity and nondiscrimination laws.

(f) Assuring that employees are protected against coercion for partisan political purposes and are prohibited from using their official authority for the purpose of interfering with or affecting the result of an election or a nomination for office.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The provisions of the federal merit standards recognizes fully the rights, powers and responsibility of state government and encourages innovation and allows for diversity in the design, execution and management of the system of personnel management, as provided by the Intergovernmental Personnel Act of 1970 if standards have certain specific requirements and options. The requirements and options have been exercised by the General Assembly in the enactment of KRS Chapter 18A and its delegation of duties and responsibilities to the State Personnel Board and the Department of Personnel.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This regulation to our knowledge is not stricter than the federal mandate.

PERSONNEL BOARD

101 KAR 1:365. Appeal and hearing procedures.

RELATES TO: KRS 18A.075, 18A.0751, 18A.095

STATUTORY AUTHORITY: KRS Chapter 13A, 18A.0751

NECESSITY AND FUNCTION: KRS 18A.075 requires the Personnel Board to promulgate comprehensive administrative regulations consistent with the provisions of KRS 18A.005 to 18A.200. KRS 18A.0751 specifies that the Personnel Board promulgate comprehensive administrative regulations providing for the procedures to be utilized by the board in the conduct of hearings. This regulation will replace 101 KAR 1:360 which includes repetition of statutory language which is being repealed.

Section 1. General Provisions. (1) Appeals shall be filed with the Personnel Board through the office of the executive director.

(2) Appeals shall be filed within thirty (30) calendar days as specified in KRS 18A.095 and 101 KAR 1:375. When the 30th day of the filing period falls on a day when the executive director's office is closed during normal working hours, the appeal may be filed on the next regular working day.

(3) All appeals shall be heard in Frankfort, Kentucky.

(4) If the appeal form indicates that the appealing employee has retained counsel at the time of filing an appeal, notice of the scheduled hearing and all future notices, correspondence and orders regarding the appeal shall be transmitted to that attorney and all filings and motions on behalf of the appealing employee shall be submitted by that attorney.

(5) Unless otherwise directed by the board, the executive director shall assign a hearing officer or officers to each appeal. If more than

one (1) hearing officer is assigned, one (1) shall be designated as chief. If the appeal is to be heard by the full board, the chairman shall serve as the chief hearing officer.

Section 2. Continuances. (1) Any party may request a continuance of a scheduled hearing for good cause. The request shall be in writing, shall state the reason for the request and include proposed dates for rescheduling. The request shall be filed with the board, through the office of the executive director, and mailed to all parties at least ten (10) days prior to the scheduled hearing.

(2) Any party objecting to a requested continuance may file a written objection stating the reason. Any objection shall be filed with the board, through the office of the executive director, within five (5) days prior to the scheduled hearing. Copies shall be mailed to all parties.

(3) A continuance may be granted in extraordinary circumstances by the hearing officer.

(4) A request for a continuance based on a bona fide personal emergency shall be granted only upon appropriate justification and may be granted without strict compliance with the requirements of this section.

(5) All requests for continuance shall be ruled on by the hearing officer. At the direction of the hearing officer, the executive director shall execute and transmit to all parties an interim order either granting or denying the continuance. If the continuance is granted, the interim order shall indicate the date on which the hearing has been rescheduled or that the hearing has been continued generally.

Section 3. Prehearing Procedures. (1) All motions, requests or filings shall be in writing, filed with the board through the office of the executive director, and served on all other parties.

(2) Any interim order by the hearing officer shall be executed and transmitted by the executive director to all parties. Interim orders are not reviewable by the board except on final review, unless otherwise provided in the interim order.

(3) If an appealing employee retains counsel subsequent to filing his appeal, the attorney shall file a written entry of appearance. All future notices, correspondence, and orders regarding the appeal shall be transmitted to that attorney and all future filings and motions on behalf of the appealing employee shall be submitted by that attorney.

(4) An appealing employee shall notify all parties and the board in writing of any change of address.

(5) A list of witnesses who may be called to testify shall be filed by each party at least five (5) days prior to the scheduled hearing. Failure of either party to file a witness list within the prescribed time shall restrict that party to rebuttal.

(6) Subpoena forms shall be available in the office of the executive director and shall be issued by the executive director. Preparation and service of the subpoena and compliance with the subpoena are the responsibility of the party requesting the subpoena.

(7) Depositions may be taken only in extraordinary circumstances and upon

authorization by the hearing officer. A request to take a deposition shall be filed at least seven (7) days prior to the scheduled hearing. Any objections shall be filed prior to the scheduled hearing.

(8) Upon agreement of all parties and approval by the hearing officer, two (2) or more appeals which involve the same or similar facts may be consolidated. Upon motion of any party, or upon his own motion, the hearing officer may join other parties as necessary to appropriately consider the matter on appeal.

(9) The hearing officer may schedule a prehearing conference to define the issues, determine which facts, if any, can be stipulated, rule on pending motions or requests, and address any other matter which will facilitate the hearing.

(10) Any agreed settlements shall be submitted in writing for the full board's review and final action.

(11) The executive director, general counsel, and board staff may participate in ex parte communication concerning pending and impending proceedings before the board relating to:

- (a) Procedural questions.
- (b) Scheduling of hearings.

Section 4. Conduct of Hearing. (1) Unless the appeal is heard by the full board, the hearing officer assigned shall hear the appeal. The hearing officer shall be empowered to make all decisions and rule on all matters concerning the conduct of the hearing. He shall require an orderly and proper decorum at the hearing, and shall be authorized to require compliance with his rulings.

(2) Failure of any party to appear at the hearing may result in an adverse ruling against that party.

(3) The rules of civil procedure do not apply.

(4) The hearing officer shall direct one of the parties to present its case first, examine witnesses and submit documentation, subject to cross examination. The opposing party shall then present its case, examine witnesses and submit documentation, subject to cross examination.

(5) All parties shall provide three (3) copies of any exhibit which is to be introduced as evidence. Copies shall be prepared prior to the hearing.

(6) The proceedings and evidence presented shall be recorded by a court reporter.

(7) No electronic media coverage, including radio or television broadcasting or video recording, shall be permitted during the hearing.

Section 5. Findings and Recommendations; Exceptions. (1) Following completion of the hearing, the hearing officer shall prepare a recommended order, including findings of fact and recommendations, based on the evidence, facts and information presented at the hearing and contained in the record.

(2) At the direction of the hearing officer, the recommended order shall be entered and transmitted by the executive director to all parties.

(3) Any party may submit written exceptions to the findings of fact and recommendations. Exceptions shall be filed with the board through the office of the executive director within ten (10) days of entry of the recommended order, unless otherwise directed by the hearing officer at the time the recommended order is entered,

and served on all parties.

(4) Any party may submit a written response to exceptions filed with the board. The response shall be filed with the board through the office of the executive director within twenty (20) days of entry of the recommended order, unless otherwise directed by the hearing officer at the time the recommended order is entered, and served on all parties.

(5) Exceptions and responses not timely filed shall be noted and made a part of the record, but shall not be considered by the board in making a final determination.

Section 6. Board Review and Action. (1) The board may adopt as submitted the findings and recommendations of the hearing officer, amend the findings or recommendations based on evidence or information contained in the record prior to adoption, or order the appeal remanded to the hearing officer for further action as appropriate.

(2) Following consideration by the full board, a final order shall be entered disposing of the appeal. The order shall be prepared, executed and entered at the direction of the board by the secretary to the board. Copies of the order shall be transmitted to all parties by the executive director.

ARTHUR HATTERICK, JR., Secretary

APPROVED BY AGENCY: December 9, 1988

FILED WITH LRC: December 13, 1988 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 24, 1989 at 8:30 a.m. in Room 360, Capitol Annex Building. Individuals interested in attending this hearing shall notify this agency in writing by January 19, 1989, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Personnel Board, Room 372, Capitol Annex Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Arthur Hatterick, Jr.

(1) Type and number of entities affected: All state agencies with classified and unclassified employees.

(a) Direct and indirect costs or savings to those affected: None

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body: None

(a) Direct and indirect costs or savings: None

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: None

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None

(6) Any additional information or comments: The repeal of the current administrative regulations which currently includes some statutory language is for the purpose of satisfying the requirements of KRS Chapter 13A prohibiting the repeating of statutory language in administrative regulations.

TIERING: Was tiering applied? No. Tiering has not been utilized in the administrative regulations of the Personnel Board in that the board is a quasi-judicial body and as such has no latitude not granted by statute to utilize tiering methods outlined in KRS 13A.210.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. Local governments must comply with the provisions of this regulation pursuant to the provisions of KRS 61.371 to 61.379 as it relates to an appeal before the board. Such appeals are filed by individuals seeking to be restored to employment from military duty. Since the amendment of KRS 61.371 there have been only two appeals filed relating to this matter, both of which have been resolved prior to a full evidentiary hearing.

3. State the aspect or service of local government to which this administrative regulation relates. See item No. 2 above.

4. How does this administrative regulation affect the local government or any service it provides? See item No. 2 above.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The rules concerning standards for the establishment and maintenance of a merit system for state governmental units receiving federal grants in aid were issued by the Office of Personnel Management and became effective on February 9, 1979. These rules were revised April 4, 1983, and are now codified as 5 CFR, Part 900, Subpart F, Sections 900.601-900.606 (48 F.R. 9209, March 4, 1983).

2. State compliance standards. The purpose of these regulations is to implement provisions of Title II of the Intergovernmental Personnel Act of 1970, as amended, relating to federally required merit personnel systems in state agencies. Certain federal grant programs require, as a condition of eligibility, that state agencies that receive grants establish

merit personnel systems for their personnel engaged in administrative of the grant-aided program. These merit personnel systems are in some cases required by specific federal grant statutes and in other cases are required by regulations of the federal grantor agencies.

3. Minimum or uniform standards contained in the federal mandate. The standards required for a merit system of personnel administration include such merit principles as:

(a) Recruiting, selecting, and advancing employees on the basis of their relative ability, knowledge, and skills, including open consideration of qualified applicants for initial appointment.

(b) Providing equitable and adequate compensation.

(c) Training employees, as needed, to assure high quality performance.

(d) Retaining employees on the basis of the adequacy of their performance, correcting inadequate performance, and separating employees whose inadequate performance cannot be corrected.

(e) Assuring fair treatment of applicants and employees in all aspects of personnel administration without regard to political affiliation, race, color, national origin, sex, religious creed, age or handicap and with proper regard for their privacy and constitutional rights as citizens. This "fair treatment" principle includes compliance with the federal equal employment opportunity and nondiscrimination laws.

(f) Assuring that employees are protected against coercion for partisan political purposes and are prohibited from using their official authority for the purpose of interfering with or affecting the result of an election or a nomination for office.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The provisions of the federal merit standards recognizes fully the rights, powers and responsibility of state government and encourages innovation and allows for diversity in the design, execution and management of the system of personnel management, as provided by the Intergovernmental Personnel Act of 1970 if standards have certain specific requirements and options. The requirements and options have been exercised by the General Assembly in the enactment of KRS Chapter 18A and its delegation of duties and responsibilities to the State Personnel Board and the Department of Personnel.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This regulation to our knowledge is not stricter than the federal mandate. It merely provides the impartial appeal process as required by the federal merit standard that results in a timely enforceable decision.

PERSONNEL BOARD

101 KAR 1:375. Employee grievances and complaints.

RELATES TO: KRS 18A.075, 18A.0751

STATUTORY AUTHORITY: KRS Chapter 13A, 18A.0751

NECESSITY AND FUNCTION: KRS 18A.075 and 18A.0751 requires the Personnel Board to adopt

comprehensive administrative regulations consistent with the provisions of KRS 18A.005 to 18A.200. This regulation will replace 101 KAR 1:370 which includes repetition of statutory language which is being repealed.

Section 1. Definitions; Grievance. A grievance is a complaint filed by an employee which concerns some aspect of his conditions of employment over which his cabinet or agency has control and which has occurred or of which the employee has become aware, through the exercise of due diligence, within thirty (30) days prior to filing.

Section 2. General Provisions. (1) Any employee in the classified service who believes that he has been subjected to unfair or unjust treatment concerning his conditions of employment may file a grievance in accordance with this procedure.

(2) Any grievance concerning an action which is appealable directly to the board pursuant to KRS 18A.095 may also be filed with the cabinet or agency. The filing of a grievance with the cabinet or agency does not prohibit the employee from also filing an appeal with the board, however it shall not extend the thirty (30) day appeal period.

(3) Employees utilizing this procedure shall be entitled to file grievances without interference, coercion, discrimination, or reprisal.

(4) Appointing authorities shall inform all employees of the provisions of this regulation, or any modifications in the levels of review which have been approved by the Personnel Board for the employee's cabinet or agency pursuant to Section 4(7) of this regulation.

(5) The Commissioner of Personnel shall make available to the employees, through the appointing authorities, a uniform grievance form to be used for the filing a grievance. The form shall contain a notice in bold print that, if the grievance concerns an action appealable directly to the board pursuant to KRS 18A.095, the employee's right to file an appeal is not extended beyond thirty (30) days.

Section 3. Procedures. (1) A grievance shall be filed with the employee's immediate supervisor within thirty (30) days following occurrence or the employee becoming aware, through the exercise of due diligence, of the action which is the subject of the grievance.

(2) The employee shall set forth in writing the basis of his grievance or complaint together with the corrective action desired. If the employee wishes to submit additional information or documentation, he may attach it to the grievance.

(3) When a grievance is filed that alleges discrimination on the basis of race, color, religion, national origin, sex, handicap or age forty (40) or over, the recipient shall immediately notify the cabinet or agency EEO coordinator to comply with the affirmative action plan.

(4) Interviews to evaluate or investigate the grievance outside of normal work hours with the grievant or other employees shall entitle those employees to compensatory time.

(5) Interviews to evaluate or investigate the grievance held with the grievant or other employees shall not require the use of leave

time.

(6) Both parties may have a representative present at each step of the grievance procedure.

Section 4. Grievance Levels. (1) The immediate supervisor shall, upon investigation, issue findings and a decision in writing to the employee within five (5) work days after receipt of the grievance. If the first line supervisor is unable to resolve the complaint to the satisfaction of the employee, the employee may request review of the grievance within two (2) work days of receipt of the decision to the next appropriate level.

(2) The second line supervisor shall, upon investigation, issue findings and a decision in writing to the employee within five (5) work days after receipt of the grievance. If the second line supervisor is unable to resolve the complaint to the satisfaction of the employee, the employee may request review of the grievance within two (2) work days of receipt of the decision to the next appropriate level.

(3) The third line supervisor shall, upon investigation, issue findings and a decision in writing to the employee within five (5) work days after receipt of the grievance. If the third line supervisor is unable to resolve the grievance to the satisfaction of the employee, the employee may request review of the grievance within two (2) work days of receipt of the decision to the fourth line supervisor.

(4) The fourth line supervisor shall, upon investigation, issue findings and a decision in writing to the employee within five (5) work days after receipt of the grievance.

(5) If the fourth line supervisor is unable to resolve the grievance to the satisfaction of the employee, the employee may request review of the grievance within two (2) work days of receipt of the decision to the appointing authority for a final determination. The appointing authority, upon investigation, shall issue findings and a final determination in writing to the employee within ten (10) work days.

(6) The final determination of the appointing authority may be appealed to the Personnel Board within thirty (30) days of receipt, excluding the day the final determination is received. An appeal form shall be attached to the final determination of the appointing authority.

(7) Modification of the procedures set forth in this section necessary to accommodate organizational structure within a cabinet or agency may be made only upon approval of the Personnel Board.

(8) Failure of supervisory or management personnel to respond within prescribed time limits automatically advances the grievance to the next review level, unless the time limits have been extended by agreement of the parties.

(9) Any intermediate grievance level may be waived by written agreement of the parties.

ARTHUR HATTERICK, JR., Secretary

APPROVED BY AGENCY: December 9, 1988

FILED WITH LRC: December 13, 1988 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 24, 1989 at 8:30 a.m. in Room 360, Capitol Annex Building. Individuals interested in attending this hearing shall notify this agency in writing by January 19, 1989, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the

hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Personnel Board, Room 372, Capitol Annex Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Arthur Hatterick, Jr.

(1) Type and number of entities affected: All state agencies with classified and unclassified employees.

(a) Direct and indirect costs or savings to those affected: None

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body: None

(a) Direct and indirect costs or savings: None

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: None

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None

(6) Any additional information or comments: The repeal of the current administrative regulations which currently includes some statutory language is for the purpose of satisfying the requirements of KRS Chapter 13A prohibiting the repeating of statutory language in administrative regulations.

TIERING: Was tiering applied? No. Tiering has not been utilized in the administrative regulations of the Personnel Board in that the board is a quasi-judicial body and as such has no latitude not granted by statute to utilize tiering methods outlined in KRS 13A.210.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The rules concerning standards for the establishment and maintenance of a merit system for state governmental units receiving federal grants in aid were issued by the Office of Personnel Management and became effective on February 9, 1979. These rules were revised April 4, 1983, and are now codified as 5 CFR, Part 900, Subpart F, Sections 900.601-900.606 (48 F.R. 9209, March 4, 1983).

2. State compliance standards. The purpose of these regulations is to implement provisions of Title II of the Intergovernmental Personnel Act of 1970, as amended, relating to federally required merit personnel systems in state agencies. Certain federal grant programs require, as a condition of eligibility, that state agencies that receive grants establish merit personnel systems for their personnel engaged in administrative of the grant-aided program. These merit personnel systems are in some cases required by specific federal grant statutes and in some cases required by specific federal grant statutes and in other cases are required by regulations of the federal grantor agencies.

3. Minimum or uniform standards contained in the federal mandate. The standards required for a merit system of personnel administration include such merit principles as:

(a) Recruiting, selecting, and advancing employees on the basis of their relative ability, knowledge, and skills, including open consideration of qualified applicants for initial appointment.

(b) Providing equitable and adequate compensation.

(c) Training employees, as needed, to assure high quality performance.

(d) Retaining employees on the basis of the adequacy of their performance, correcting inadequate performance, and separating employees whose inadequate performance cannot be corrected.

(e) Assuring fair treatment of applicants and employees in all aspects of personnel administration without regard to political affiliation, race, color, national origin, sex, religious creed, age or handicap and with proper regard for their privacy and constitutional rights as citizens. This "fair treatment" principle includes compliance with the federal equal employment opportunity and nondiscrimination laws.

(f) Assuring that employees are protected against coercion for partisan political purposes and are prohibited from using their official authority for the purpose of interfering with or affecting the result of an election or a nomination for office.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The provisions of the federal merit standards recognizes fully the rights, powers and responsibility of state government and encourages innovation and allows for diversity in the design, execution and management of the system of personnel management, as provided by the Intergovernmental Personnel Act of 1970 if standards have certain specific requirements and options. The requirements and options have been exercised by the General Assembly in the enactment of KRS Chapter 18A and its delegation of duties and responsibilities to the State Personnel Board and the Department of Personnel.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This regulation to our knowledge is not stricter than the federal mandate.

PERSONNEL BOARD

101 KAR 1:395. Restoration from military duty.

RELATES TO: KRS 61.371 to 61.379

STATUTORY AUTHORITY: KRS Chapter 13A, 61.379

NECESSITY AND FUNCTION: KRS 61.379 directs the Personnel Board to adopt regulations to carry out the provisions of KRS 61.371 to 61.379. This regulation will replace 101 KAR 1:390 which includes repetition of statutory language which is being repealed.

Section 1. Restoration from Military Duty. (1) If an employee advises his employer that he is leaving his position to perform military duty, the employer shall advise the employee in writing of his rights under KRS 61.371 to 61.379.

(2) An employee who returns from military duty and is denied restoration of employment shall be advised in writing of such denial by the employer.

(3) The required notice of denial by the employer shall include the employee's right to appeal to the state personnel board within thirty (30) days of notice.

(4) Appeals filed under this section shall be heard by the board pursuant to 101 KAR 1:365.

ARTHUR HATTERICK, JR., Secretary

APPROVED BY AGENCY: December 9, 1988

FILED WITH LRC: December 13, 1988 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 24, 1989 at 8:30 a.m. in Room 360, Capitol Annex Building. Individuals interested in attending this hearing shall notify this agency in writing by January 19, 1989, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Personnel Board, Room 372, Capitol Annex Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Arthur Hatterick, Jr.

(1) Type and number of entities affected: All public employers.

(a) Direct and indirect costs or savings to those affected: None

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body: None

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: None

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None

(6) Any additional information or comments: The repeal of the current administrative regulations which currently includes some statutory language is for the purpose of satisfying the requirements of KRS Chapter 13A prohibiting the repeating of statutory language in administrative regulations.

TIERING: Was tiering applied? No. Tiering has not been utilized in the administrative regulations of the Personnel Board in that the board is a quasi-judicial body and as such has no latitude not granted by statute to utilize tiering methods outlined in KRS 13A.210.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. Local governments must comply with the provisions of this regulation pursuant to the provisions of KRS 61.371 to 61.379.

3. State the aspect or service of local government to which this administrative regulation relates. See No. 2.

4. How does this administrative regulation affect the local government or any service it provides? See No. 2.

REVENUE CABINET

Department of Professional & Support Services

103 KAR 35:030. Taxable gross value.

RELATES TO: KRS 143.010, 143.020

STATUTORY AUTHORITY: KRS Chapter 13A, 131.130

NECESSITY AND FUNCTION: This regulation describes the procedure to be utilized in arriving at the taxable gross value of coal when both the severing and processing of the coal do not occur entirely in Kentucky. KRS Chapter 143 fails to provide a method to arrive at taxable gross value in such a situation other than to consider the entire amount received or receivable by the taxpayer to be the taxable gross value.

Section 1. Definitions. As used in this regulation:

(1) "Severed" or "severing" means "severed" or "severing" as defined in KRS 143.010(3) except that, in the case of a taxpayer who severs coal outside of Kentucky, "severed" or "severing" shall mean the physical extraction of coal from the earth.

(2) "Processing" means processing as defined in KRS 143.010(8).

(3) "Total gross value" means gross value as defined in KRS 143.010(6), net of transportation expense as defined in KRS 143.010(11).

(4) "Taxable gross value" means the portion of total gross value attributable to the severing or processing activity or activities performed in Kentucky.

Section 2. Taxpayers severing coal in Kentucky and partially or wholly processing the coal outside of Kentucky thereafter and taxpayers severing coal outside of Kentucky and partially or wholly processing the coal in Kentucky thereafter shall determine and report the taxable gross value by application of the following formula:

(1) Determine the direct cost of the severing or processing activity or activities performed in Kentucky by use of the chart in subsection (4) of this section.

(2) Determine the direct cost of the severing or processing activity or activities performed outside of Kentucky by use of the chart in subsection (4) of this section.

(3) Exclude from subsections (1) and (2) of this section transportation expense as defined in KRS 143.010(11) and overhead cost as described in subsection (4) of this section.

(4) For purposes of computing the formula under this section, the following chart classifies certain expenses into either severing, processing or overhead cost. The chart is not intended to be all inclusive. Any expense that is not directly attributable to either the severing or processing of coal shall be classified as an overhead cost.

Item	Direct Severing	Direct Processing	Overhead
Black lung excise tax	X		
Commissions			X
Contract mining (net of transportation expense)	X		
Cost depletion	X		
Depreciation	X	X	
Development	X		
Equipment rental	X	X	
Explosives	X		
Fee processing		X	
Fuel	X	X	
Freight yard and siding			X
General			X
General insurance & supervision			X
General office			X
Idle expenses			X
Inventory adjustments			X
Labor and labor related	X	X	
Maintenance	X	X	
Mine closing			X
Officers salaries			X
Percentage depletion			X
Quality analysis			X
Reclamation	X		
Refuse disposal		X	
Royalties (based on tons severed)	X		
Scale & weighman's expenses			X

Taxes (sales, coal severance, property, franchises, state income, etc.)
Transportation
Wheelage

X
X

X

(5) Direct cost determined in subsection (1) of this section divided by the direct cost determined in subsection (1) of this section plus the direct cost determined in subsection (2) of this section times the total gross value of the coal equals the taxable gross value of the coal.

Section 3. Any taxpayer determining taxable gross value as provided in this regulation shall submit a worksheet to the Revenue Cabinet with each coal tax return reflecting the costs, classifications thereof, and computations utilized in arriving at the taxable gross value as reported on the return.

C. EMMETT CALVERT, Secretary

APPROVED BY AGENCY: December 15, 1988

FILED WITH LRC: December 15, 1988 at noon

PUBLIC HEARING: A public hearing on this regulation shall be held on January 23, 1989 at 10 a.m. in Room 406 of the Capitol Annex, Frankfort, Kentucky. If no written notice of intent to attend the public hearing is received within five days before the scheduled hearing, the hearing will be cancelled. Those interested in attending shall notify in writing: Scott Akers, Revenue Cabinet, Division of Tax Policy and Legal Services, New Capitol Annex Building, Frankfort, Kentucky 40620.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Scott Akers

(1) Type and number of entities affected: Those affected are coal severance taxpayers who both sever and process coal but with only a portion of the activity performed in Kentucky. There are approximately 12 known taxpayers who will be affected by this regulation.

(a) Direct and indirect costs or savings to those affected: Most of those taxpayers affected by this regulation report taxable gross value of their coal based on the concept of fair market value and not based on a fraction of the sale price. In most cases, this method favors the taxpayer and not the Commonwealth. Collectively, those taxpayers affected by the regulation will remit an estimated \$5 million additional coal tax per annum. Reporting the value of coal at its fair market value will almost always generate an audit of the taxpayer's coal tax return. Due to the complexity of determining the fair market value of coal prior to its sale, especially on the part of the Revenue Cabinet, the prescribed formula as outlined in the regulation benefits everyone concerned to some extent. The taxpayer will be in a better position to determine his actual coal tax liability by utilizing the formula prescribed by the regulation.

1. First year: The first year's cost to the taxpayers is estimated to be \$5 million.

2. Continuing costs or savings: Same as first year.

3. Additional factors increasing or decreasing costs (note any effects upon competition): None known.

(b) Reporting and paperwork requirements: Section 3 of the regulation does require those taxpayers affected by the regulation to submit a worksheet to the cabinet for the purpose of reflecting the classification of costs and computations utilized in arriving at the taxable gross value. A taxpayer may use the same formula for succeeding months as long as his costs do not materially change and then make a reconciliation at the end of his calendar or fiscal year or sooner, if necessary.

(2) Effects on the promulgating administrative body: The cabinet will collect an estimated \$5 million additional coal tax per annum under this regulation. In addition, the difficulty the cabinet has of auditing the affected taxpayers and defending those audits is substantially reduced, requiring fewer audit hours and other administrative costs.

(a) Direct and indirect costs or savings:

1. First year: An estimated \$5 million per annum of coal tax will be collected. In addition, an undeterminable savings will be realized due to fewer man-hours and other administrative costs normally consumed in the audit process.

2. Continuing costs or savings: Same as first year.

3. Additional factors increasing or decreasing costs: None known.

(b) Reporting and paperwork requirements: The regulation will have very little impact on the cabinet in this regard.

(3) Assessment of anticipated effect on state and local revenues: As stated under (1) above, it is estimated that those taxpayers affected will remit an additional \$5 million annually to the general fund. From this amount, a minimum of 12 percent will be rebated to the coal producing and coal impact counties under the Local Government Economic Assistance Fund established under KRS 42.450.

(4) Assessment of alternative methods; reasons why alternatives were rejected: There are only two remaining alternatives to compute the gross value of coal which is severed in Kentucky and processed outside Kentucky or vice versa. The first alternative is to tax the entire sale price of the coal since the statutes do not address the problem as covered by this regulation. The second approach is to use the fair market value approach which, for the most part, is currently being used by the affected taxpayers. The first alternative was rejected because it is grossly unfair to the taxpayer to tax the entire sale price of his coal. The second alternative is unfair because it is difficult for the cabinet to obtain all the necessary facts in order to arrive at the actual fair market value. Also, the sale price of the coal reduced by the value of the activity performed outside the state is the best indicator of the taxable gross value. The prescribed formula is very fair in this regard and does not discriminate as to whether the coal is severed or processed in this state or outside this state.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None known.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation

with conflicting provisions:

(6) Any additional information or comments: A similar problem occurred in 1972 when the severance tax was first enacted. At that time, the tax was levied on the act of severing. The tax on the act of processing was not added until 1978. In 1972, a taxpayer who both severed and processed coal in Kentucky had no alternative but to pay tax on the full sale price of the coal. To correct the unfairness of the situation, 103 KAR 35:010 was promulgated for the purpose of arriving at the severed value of the coal. The regulation was upheld by the Kentucky Board of Tax Appeals in the case of Majestic Collieries Company vs. Department of Revenue, Order No. K-4712. The regulation was similar to the present proposed regulation and had the same purpose for promulgating, i.e., to eliminate from taxation the act not subject to taxation. The former regulation was repealed in 1978 when the act of processing became taxable.

TIERING: Was tiering applied? Yes.

GENERAL GOVERNMENT CABINET Board of Hairdressers and Cosmetologists

201 KAR 12:190. Investigations and complaints.

RELATES TO: KRS 317A.140, 317A.145

STATUTORY AUTHORITY: KRS 317A.145

NECESSITY AND FUNCTION: KRS 317A.060, 317A.145. The board shall receive and investigate complaints relating to licensee's business or professional practices and illegal practices.

Section 1. The board or other board personnel shall receive all complaints against any person licensed under the provisions of KRS Chapter 317A relating to such licensee's business or professional practices.

Section 2. The board shall make available to the public a complaint form which may be used by any person filing a complaint against any licensee.

Section 3. "Complaint" shall be defined as any writing received by the board which contains the name of the complainant and alleges violations of any board statute or regulation or other wrongdoing by any licensee relating to such licensee's business or professional practices.

Section 4. A log or record shall be maintained and shall be made available for public inspection, containing at least the following information concerning complaints received by the board:

- (1) Licensee's name;
- (2) Complainant's name;
- (3) Date complaint was received by the board;
- (4) Brief statement of the complaint; and
- (5) Ultimate disposition of the complaint by the board.

Section 5. All complaints received by the board concerning any person licensed under the provisions of KRS Chapter 317A relating to such licensee's business or professional practices shall be investigated.

Section 6. The board may, at any time, on their own volition or on the basis of

information available, conduct an investigation or inspection and file a complaint against any person licensed under the provisions of KRS Chapter 317A.

Section 7. Any complaint, as defined in Section 3 of this regulation, that is filed with the board, which alleges that a licensee has violated a statutory provision of KRS Chapter 317A or an administrative regulation of the board, shall be sent to the licensee before the complaint is placed on the board agenda. The licensee shall be provided at least ten (10) days after the complaint is mailed to file a written response to the complaint.

Section 8. The complaint and the response, if any is received, shall be placed on the board agenda for consideration at the next board meeting, or as soon thereafter as is practicable, following receipt of the written response or the expiration of the ten (10) days provided for a response, whichever occurs first.

Section 9. The board members shall review the complaint and any response received and shall take such action as it deems necessary.

Section 10. Any board member, who has participated in the investigation of a complaint or who has substantial personal knowledge of facts concerning the complaint which could influence an impartial decision by the board member, shall disqualify himself from participating in the adjudication of the complaint.

Section 11. 201 KAR 12:170, Complaints and investigations, is hereby repealed.

CARROLL ROBERTS, Administrator

APPROVED BY AGENCY: November 14, 1988

FILED WITH LRC: December 14, 1988 at 11 a.m.

PUBLIC HEARING: A public hearing has been scheduled on January 23, 1989 at 3 p.m. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Carroll Roberts, Administrator, 314 West Second Street, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Carroll Roberts

(1) Type and number of entities affected: N/A

(a) Direct and indirect costs or savings to those affected: N/A

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: N/A

(2) Effects on the promulgating administrative body: None

(a) Direct and indirect costs or savings: N/A

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: N/A

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A

(5) Identify any statute, administrative

regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied? No. Tiering was not applied because there is no difference in classification of licenses with regard to complaints. All complaints should be handled in the same manner.

GENERAL GOVERNMENT CABINET Board of Examiners of Psychologists

201 KAR 26:121. Scope of practice.

RELATES TO: KRS 319.032

STATUTORY AUTHORITY: KRS 319.032

NECESSITY AND FUNCTION: To fulfill the requirement of establishing the scope of practice of psychologists.

Section 1. A licensed psychologist, certified psychologist with autonomous functioning, certified psychologist, or psychological associate shall not practice or present himself outside the area of competency specified in the application and the area approved by the board based upon examination or review of qualifications, training and experience.

Section 2. (1) A change in a licensed or certified area of competency must include a written petition to the board.

(2) Following the submission of a written petition, the board shall review the applicant's credentials, qualifications and experience. Following such review, the board may approve the designation of additional areas of competency or may require the applicant to take an examination in the requested areas. If an examination is required by the board, the applicant must submit a complete application accompanied by the approved fee for licensure or certification.

Section 3. Change from Certified to Licensed Psychologist. (1) If a person has been certified and later wishes, on the basis of additional training and experience, to become licensed as a psychologist, a new and complete application for licensure as a psychologist with area of competency requested must be submitted with an approved application fee.

(2) The board will accept the applicant's previous examination results for the objective (EPPP) examination if the original test score satisfies the licensure requirement as to criterion level.

(3) The oral portions of the examination must be completed by the applicant.

Section 4. The following regulations are hereby repealed: 201 KAR 26:010, 201 KAR 26:030, 201 KAR 26:050, 201 KAR 26:070, 201 KAR 26:080, 201 KAR 26:120, and 201 KAR 26:240.

DAVID NICHOLAS, Director

APPROVED BY AGENCY: December 15, 1988

FILED WITH LRC: December 15, 1988 at noon

PUBLIC HEARING: A public hearing has been scheduled concerning this regulation on January

30, 1989, at 10 a.m. at the Capitol Annex, Room 107, Frankfort, Kentucky. Anyone interested in attending this hearing shall notify in writing: Rudy A. Bisciotti, The Capitol Building, Frankfort, Kentucky 40601, at least 5 days before the hearing.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Rudy A. Bisciotti

(1) Type and number of entities affected: Board of Examiners of Psychologists, and all psychologists.

(a) Direct and indirect costs or savings to those affected: None

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: None

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: No anticipated effect on state and/or local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Not applicable - no alternative appropriate.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied? No. No disproportionate impact on any certain class or classes of regulated entities; no over-regulation problem encountered through this regulation or amendments thereto.

TRANSPORTATION CABINET Department of Vehicle Regulation Division of Motor Carriers

601 KAR 1:150. Identification of motor carrier vehicles.

RELATES TO: KRS Chapters 138 and 281

STATUTORY AUTHORITY: KRS 138.665, 281.600, 281.750

NECESSITY AND FUNCTION: This regulation sets forth the requirement for the marking and identification of commercial motor vehicles operating in the Commonwealth of Kentucky.

Section 1. Definitions. (1) "Control number" means either an Interstate Commerce Commission motor carrier (ICC MC) number as required by 49 CFR 1058.2; a U.S. Department of Transportation (DOT) number as required by 49 CFR 390.21; or a Kentucky highway motor fuel use license (KYU) number as required by KRS 138.665;

(2) "Unique vehicle identification number" means the company unit number assigned to an individual vehicle;

(3) "Motor carrier" means as defined in KRS 138.655(5);

(4) "Carrier" means as defined in KRS 281.011(1) except U-drive-its;

(5) "Motor carrier vehicle identification card (cab card)" means that identifying plate, decal, card, sign or paper issued by the Department of Vehicle Regulation under the authority of KRS 281.752; and

(6) "Commercial motor vehicle" means as defined in KRS 138.655(4) and (5)(c) except that it does not include a farm vehicle properly registered under KRS 186.050(4).

Section 2. Identification. All motor carriers shall at all times display on each side of every vehicle employed by them in their operations the name of the company or person conducting the operation as the name appears on the certificate or permit authorizing the operation. An assumed or trade name may be used providing the appropriate statutes and regulations are complied with and the assumed or trade name also appears on the certificate or permit. The letters shall be of sufficient size so as to be readily legible. The motor carrier vehicle identification card (cab card) issued for the vehicle shall at all times be prominently displayed on the inside of the vehicle. The name of the driver operating a vehicle engaged in transportation of persons for-hire shall be prominently displayed in the vehicle.

Section 3. Control Number and Unique Identifier. (1) Every commercial motor vehicle having a declared gross weight above 26,000 pounds with three (3) or more axles, which is subject to any of the taxes in KRS 138.660, shall when operating upon the public highways of the Commonwealth of Kentucky display on the vehicle the control number of the motor carrier under whose authority the vehicle is being operated and a unique vehicle identification number for the vehicle. The motor carrier's control number required by this administrative regulation shall only be accepted by the Department of Vehicle Regulation for the purpose of exterior display on the vehicle and shall not be accepted for any other purpose. These numbers may be permanently affixed to the vehicle or displayed by use of a removable device.

(2) All ICC MC or DOT numbers shall be validated with the Department of Vehicle Regulation prior to their being accepted as control numbers. The control number shall be placed on both sides of the main body of the cab. The number shall be immediately preceded by an Alpha prefix indicating that the number is an ICC MC, ICC, MC, DOT or KYU number. The figures shall be in sharp color contrast to the background of the vehicle and of such size, shape and color as to be readily visible during daylight hours from a distance of fifty (50) feet when the vehicle is not in motion. These numbers shall be placed on the vehicle no higher than the top of the side window and no lower than the top of the front wheel.

(3) The unique vehicle identification number shall be displayed on the front of the vehicle readily visible in daylight hours from a distance of 100 feet when the vehicle is not in motion. This number shall be in sharp color contrast to the background of the vehicle. It shall be placed no higher than the bottom of the windshield and no lower than the bottom of the

front bumper.

MILO D. BRYANT, Secretary

JEROME LENTZ, Acting Commissioner

APPROVED BY AGENCY: November 18, 1988

FILED WITH LRC: December 13, 1988 at 10 a.m.

PUBLIC HEARING: A public comment hearing will be held on this administrative regulation on January 24, 1989 at 11 a.m., local prevailing time in the Fourth Floor Hearing Room of the State Office Building located at the corner of High and Clinton Streets, Frankfort, Kentucky. Any person who intends to attend this hearing must in writing by January 19, 1989 so notify this agency. If no notification of intent to attend the hearing is received by this date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the administrative regulation. A transcript of the public comment hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the administrative regulation. If the hearing is held, written comments will be accepted until the close of the hearing. If the hearing is cancelled, written comments will only be accepted until January 19, 1989. Send written notification of intent to attend the public comment hearing or written comments on the administrative regulation to: Sandra G. Pullen, Executive's Staff Advisor, Transportation Cabinet, 10th Floor State Office Building, Frankfort, Kentucky 40622.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Sandra G. Pullen

(1) Type and number of entities affected: All private and for-hire motor carriers with combination vehicles over 26,000 lbs. gross weight which operate in Kentucky, i.e., approximately 420,000 vehicles.

(a) Direct and indirect costs or savings to those affected: Placement of decal or paint on cab doors and front.

1. First year: Approximately \$50 per vehicle for marking.

2. Continuing costs or savings: \$50 for marking of each newly acquired vehicle.

3. Additional factors increasing or decreasing costs (note any effects upon competition): The majority of motor carriers are already in compliance with this regulation as a result of earlier administrative regulation requirements.

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: The regulation has no direct cost or savings to the Cabinet. However, the information available to the cabinet has a cost to collect.

1. First year: Cost: approximately \$1 million for data entry clerks.

2. Continuing costs or savings: Same as above.

3. Additional factors increasing or decreasing costs: The information collected as a result of the regulation leads to increased compliance with motor carrier tax laws and therefore an increase in taxes collected.

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: It is expected that road fund revenue collection will be increased

because of increased compliance with the motor carrier tax laws. This will increase not only state revenues but also local road fund revenues because there should be additional motor fuel taxes collected.

(4) Assessment of alternative methods; reasons why alternatives were rejected: An electronic tracking device that would have been installed in each truck was rejected as too costly. The least expensive tracking method was chosen.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: A commitment was made by the Transportation Cabinet for enhanced enforcement of the motor carrier tax laws as a result of the 1988 passage of House Bill 665. The marking provisions were originally adopted in 601 KAR 1:005. However, the Transportation Cabinet agreed to separate regulation at the public comment hearing.

TIERING: Was tiering applied? Yes.

PUBLIC PROTECTION & REGULATION CABINET Department of Insurance

806 KAR 12:130. Disclosure required for life insurance and annuity contracts used to fund preneed funeral contracts or prearrangements.

RELATES TO: KRS 304.12-020

STATUTORY AUTHORITY: KRS 304.2-110

NECESSITY AND FUNCTION: KRS 304.2-110 authorizes the Commissioner of Insurance to adopt regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. This regulation establishes disclosure requirements for life insurance or annuity contracts which are used to fund preneed funeral contracts or prearrangements.

Section 1. Definitions. As used in this regulation: "Preneed funeral contract or prearrangement" means an agreement by or for an individual before that individual's death relating to the purchase or provision of specific funeral or cemetery merchandise or services.

Section 2. Required Disclosure. When a life insurance or annuity contract is to be used to fund a preneed funeral contract or prearrangement, the following information shall be disclosed adequately at the time an application is made for such life insurance or annuity contract prior to acceptance of the applicant's initial premium or deposit:

(1) The fact that a life insurance or annuity contract is involved or is being used to fund a preneed funeral contract or prearrangement;

(2) The nature of the relationship among the soliciting agent or agents, the provider of the funeral or cemetery merchandise or services, the administrator, and any other person;

(3) The relationship of the life insurance or annuity contract to the funding of the preneed funeral contract or prearrangement and the nature and existence of any guarantees relating

to the preneed funeral contract or prearrangement;

(4) The impact on the prearrangement:

(a) Of any changes in the life insurance policy, including, but not limited to, changes in the assignment, beneficiary designation, or use of the proceeds;

(b) Of any penalties to be incurred by the contract holder as a result of failure to make premium payments; and

(c) Of any penalties to be incurred or monies to be received as a result of cancellation or surrender of the life insurance or annuity contract;

(5) A list of the merchandise and services which are applied or contracted for in the preneed funeral contract or prearrangement and all relevant information concerning the price of the funeral services, including an indication that the purchase price is either guaranteed at the time of purchase or to be determined at the time of need;

(6) All relevant information concerning what occurs and whether any entitlements or obligations arise if there is a difference between the proceeds of the life insurance or annuity contract and the amount actually needed to fund the preneed funeral contract or prearrangement;

(7) Any penalties or restrictions, including, but not limited to, geographic restrictions or the inability of the provider of funeral goods or services to perform, on the delivery of merchandise, services, or the prearrangement guarantee; and

(8) The fact that a sales commission or other form of compensation is being paid, and if so, the identity of such individuals or entities to whom it is paid.

Section 3. Severability; Effective Date. (1) If any provision of this regulation or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of this regulation and the application of such provision to other persons or circumstances shall not be effected thereby.

(2) This regulation shall become effective thirty (30) days after completion of its review under KRS Chapter 13A.

LEROY MORGAN, Commissioner

THEODORE T. COLLEY, Secretary

APPROVED BY AGENCY: December 7, 1988

FILED WITH LRC: December 8, 1988 at 11 a.m.

PUBLIC HEARING: Persons with an interest in the subject matter of the proposed regulation may comment at a public hearing scheduled for January 23, 1989, at 9 a.m. (ET), in the Offices of the Kentucky Department of Insurance, 229 West Main Street, Frankfort, Kentucky 40601. Written comments may be submitted to Leroy Morgan, Commissioner, Kentucky Department of Insurance, P.O. Box 517, Frankfort, Kentucky 40602. Written comments must be received prior to 9 a.m. (ET) on January 23, 1989, in order to receive consideration. The public hearing scheduled above may be cancelled if no one notifies the Commissioner of Insurance at least five days prior to the hearing that they will be in attendance at the hearing to comment.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Patrick Watts

Need for the Proposed Regulation: The proposed regulation is needed to provide disclosure to consumers purchasing life insurance or annuity contracts to fund preneed funeral contracts or prearrangements. Over the years, various financial products have been used to fund funeral expenses. At one time, the use of trust arrangements under KRS 367.932 et seq. and its predecessor statutes were popular. Under these statutes, persons establishing a trust to fund preneed funeral contracts or prearrangements must comply with various requirements of these statutes. However, under KRS 367.934(4), the statutes do not apply where contracts for funeral services or merchandise are funded by insurance policies which are regulated by the Department of Insurance.

This exception is well-founded in that the regulatory provisions of KRS 367.932 et seq. are unnecessary since money is being paid to an insurer subject to a wide range of financial regulatory provisions under KRS Chapter 304. Since the provisions of KRS Chapter 304 apply mainly to insurers, using insurance products to fund preneed funeral contracts or prearrangements is attractive to funeral directors because it eliminates the need to comply with KRS 367.932 et seq.

However, adequate disclosure of the relationship between life insurance and annuity contracts and the preneed funeral contracts or prearrangements which the life insurance or annuity contracts fund is necessary. The Department of Insurance has been asked by the American Association of Retired Persons to provide for such disclosure. This regulation is based on portions of the National Association of Insurance Commissioners Model Regulations involving the advertising of life insurance, life insurance disclosures, and annuity and deposit fund disclosure. In June, 1988, the National Association of Insurance Commissioners completed work on a series of guidelines specifically geared for life insurance or annuity contracts used to fund preneed funeral contracts or prearrangements.

(1) Type and number of entities affected: The proposed regulation potentially affects the approximately 600 insurers authorized to transact life insurance and annuities in Kentucky as well as the approximately 20,000 agents appointed to represent those insurers. Of course, the number of insurers and agents actually engaged in selling life insurance or annuity contracts used to fund preneed funeral contracts or prearrangements is substantially less than all insurers and agents transacting these kinds of insurance. The proposed regulation will also affect an unknown number of persons who purchase life insurance or annuity contracts to fund preneed funeral contracts or prearrangements.

(a) Direct and indirect costs or savings to those affected: Insurers will face costs in formulating disclosure documents and training employees and agents concerning disclosure requirements. The precise amount of these costs is unknown and will vary from insurer to insurer. Consumers will realize savings in that they will be able to act on an informed basis when deciding whether to purchase life insurance or an annuity to fund a preneed funeral contract

or prearrangement.

1. First year: First year costs for insurers will include creation of disclosure documents and training of employees and agents concerning the disclosure requirements.

2. Continuing costs or savings: Costs will decrease in subsequent years in that disclosure documents will have been created and the only expense will be for reproduction of those documents and providing them to consumers.

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: Insurers will have to create disclosure documents and provide them to consumers.

(2) Effects on the promulgating administrative body: The proposed regulation creates a means for the Department to assure that insurers are providing adequate disclosure to consumers who purchase life insurance or annuity contracts to fund preneed funeral contracts or prearrangements.

(a) Direct and indirect costs or savings: None

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: Alternative methods are to use the general provisions of KRS 304.12-020, which prohibit deceptive or misleading statements about the business of insurance. It is more appropriate that insurers and agents be advised as to precisely what the department expects in the disclosure of the relationship between life insurance or annuity contracts and the preneed funeral contracts or prearrangements the life insurance or annuities are used to fund.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied? Yes.

**PUBLIC PROTECTION AND REGULATION CABINET
Department of Insurance**

806 KAR 17:065. Minimum standards for Medicare supplement insurance policies.

RELATES TO: KRS 304.12-020, 304.14-500 to 304.14-550, 304.17-305, 304.17-318, 304.18-036, 304.18-095, 304.32-157, 304.32-165, 304.32-270, 304.38-193, 304.38-196, 304.38-200

STATUTORY AUTHORITY: KRS 304.2-110, 304.14.510, 304.32-250, 304.38-150

NECESSITY AND FUNCTION: KRS 304.2-110 provides that the Commissioner of Insurance may make reasonable regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. KRS 304.14-510 provides that the Commissioner of Insurance may make reasonable regulations establishing minimum standards for Medicare supplement insurance policies. KRS 304.32-250 provides that the

Commissioner of Insurance may make reasonable regulations which he deems necessary for the proper administration of KRS 304.32. KRS 304.38-150 provides that the Commissioner of Insurance may make reasonable regulations which he deems necessary for the proper administration of KRS 304.38. This regulation establishes minimum standards for Medicare supplement insurance policies.

Section 1. Definitions. For the purposes of this regulation:

(1) "Applicant" means:

(a) In the case of an individual Medicare supplement policy, the person who seeks to contract for insurance benefits; and

(b) In the case of a group Medicare supplement policy, the proposed certificate holder.

(2) "Certificate" means any certificate issued under a group Medicare supplement policy, which certificate has been delivered or issued for delivery in this state.

(3) "Commissioner" means the Commissioner of the Kentucky Department of Insurance.

(4) "Insurance policy" means an insurance policy, a subscriber contract issued by a nonprofit hospital, medical-surgical, dental, and health service corporation, and an enrollee contract issued by a health maintenance organization.

(5) "Medicare supplement policy" means a group or individual policy of insurance, a subscriber contract issued by a nonprofit hospital, medical-surgical, dental, and health service corporation, or an enrollee contract issued by a health maintenance organization which is advertised, marketed, or designed primarily as a supplement to reimbursements under Medicare for the hospital, medical, or surgical expenses of persons eligible for Medicare by reason of age.

Section 2. Purpose, Applicability, and Scope.

(1) The purpose of this regulation is to provide for the reasonable standardization of coverages and simplification of terms and benefits of Medicare supplement policies, to facilitate public understanding and comparison of such policies, to eliminate provisions contained in such policies which may be misleading or confusing in connection with the purchase of such policies or in connection with the settlement of claims, and to provide for full disclosure in the sale of health insurance coverages to persons eligible for Medicare by reason of age.

(2) Except as otherwise provided, this regulation shall apply to:

(a) All Medicare supplement policies delivered or issued for delivery in this state on or after the effective date of this regulation; and

(b) All certificates issued under group Medicare supplement policies, which certificates have been delivered or issued for delivery in this state.

Section 3. Policy Definitions and Terms. No insurance policy subject to this regulation shall contain terms or definitions which do not conform to those in this section.

(1) "Accident," "accidental injury," or "accidental means" shall be defined to employ "result" language and shall not include words which establish an accidental means test or use words such as "external, violent, visible wounds" or similar words of description or

characterization.

(a) The definition shall not be more restrictive than the following: "injury or injuries for which benefits are provided means accidental bodily injury sustained by the injured person which is a direct result of an accident, independent of disease or bodily infirmity or any other cause, and occurs while insurance coverage is in force."

(b) Such definition may provide that injury shall not include injuries for which benefits are provided or available under any workers' compensation, employer's liability, or similar law, or motor vehicle no-fault insurance plan, unless such a definition is prohibited by law.

(2) "Benefit," or "Medicare benefit," shall not be defined as more restrictive than as that defined in the Medicare program.

(3) "Convalescent nursing home," "extended care facility," or "skilled nursing facility" shall be defined in relation to its status, facilities, and available resources.

(a) A definition of such home or facility shall not be more restrictive than one requiring that it:

1. Be operated pursuant to law;
2. Be approved for payment of Medicare benefits or be qualified to receive such approval, if so requested;
3. Be primarily engaged in providing, in addition to room and board accommodations, skilled nursing care under the supervision of a duly licensed physician;
4. Provide continuous twenty-four (24) hours a day nursing service by or under the supervision of a registered graduate professional nurse (R.N.); and
5. Maintain a daily medical record of each patient.

(b) The definition of such home or facility may provide that such term not be inclusive of:

1. Any home, facility, or part thereof used primarily for rest;
2. A home or facility for the aged or for the care of drug addicts or alcoholics; or
3. A home or facility used primarily for the care and treatment of mental diseases or disorders, or custodial or educational care.

(4) "Health care expenses" means expenses of health maintenance organizations associated with the delivery of health care services which are analogous to incurred losses of insurers. Such expenses shall not include:

- (a) Home office and overhead costs;
- (b) Advertising costs;
- (c) Commissions and other costs of acquiring insurance business;
- (d) Taxes;
- (e) Capital costs;
- (f) Administrative costs; or
- (g) Claims processing costs.

(5) "Hospital" may be defined in relation to its status, facilities, and available services or to reflect its accreditation by the Joint Commission on Accreditation of Hospitals.

(a) The definition of the term "hospital" shall not be more restrictive than one requiring that the hospital:

1. Be an institution operated pursuant to law;
2. Be primarily and continuously engaged in providing or operating, either on its premises or in facilities available to the hospital on a prearranged basis and under the supervision of a staff of duly licensed physicians, medical, diagnostic, and major surgical facilities for

the medical care and treatment of sick or injured persons on an inpatient basis for which charges made; and

3. Provide twenty-four (24) hours nursing service by or under the supervision of registered graduate professional nurses (R.N.s).

(b) The definition of the term "hospital" may state that such term shall not include:

1. Convalescent homes, convalescent, rest, or nursing facilities;
2. Facilities primarily affording custodial, educational, or rehabilitative care;
3. Facilities for the aged, drug addicts, or alcoholics; or

4. Any military or veterans hospital or soldiers home or any hospital contracted for or operated by any national government or agency thereof for the treatment of members or ex-members of the armed forces, except for services rendered on an emergency basis where a legal liability exists for charges made to the individual for such services.

(6) "Medicare" shall be defined in the policy. Medicare may be substantially defined as "the Health Insurance for the Aged Act, Title XVIII of the Social Security Amendments of 1965 as then constituted or later amended," or Title I, Part I of P.L. 89-97, as enacted by the 89th Congress of the United States of America and properly known as the Health Insurance for the Aged Act, as then constituted and any later amendments or substitutes thereof, or words of similar import.

(7) "Medicare eligible expenses" shall mean health care expenses of the kinds covered by Medicare, to the extent recognized as reasonable by Medicare. Payment of benefits by insurers for Medicare eligible expenses may be conditioned upon the same or less restrictive payment conditions, including determinations of medical necessity as are applicable to Medicare claims.

(8) "Mental or nervous disorders" shall not be defined more restrictively than a definition including neurosis, psychoneurosis, psychopathy, psychosis, or mental or emotional disease or disorder of any kind.

(9) "Nurses" may be defined so that the description of nurse is restricted to a type of nurse, such as a registered graduate professional nurse (R.N.), a licensed practical nurse (L.P.N.), or a licensed vocational nurse (L.V.N.). If the words "nurse," "trained nurse," or "registered nurse," are used without specific instruction, then the use of such terms requires the insurer to recognize the services of any individual who qualified under such terminology in accordance with the statutes and regulations administered by the Kentucky Board of Nursing.

(10) "Physician" may be defined by including the words such as "duly qualified physician" or "duly licensed physician." The use of such terms requires an insurer to recognize and to accept, to the extent of its obligations under the contract, all providers of medical care and treatment when such services are within the scope of the provider's licensed authority and are provided pursuant to applicable laws.

(11) "Sickness" shall not be defined to be more restrictive than the following: "sickness means sickness or disease of an insured person which first manifests itself after the effective date of insurance and while the insurance is in force." The definition may be further modified to exclude sicknesses or diseases for which benefits are provided under any workers'

compensation, occupational disease, or employer's liability, or similar law.

Section 4. Prohibited Policy Provisions. (1) A Medicare supplement policy shall not contain a probationary or elimination period.

(2) No insurance policy may be advertised, solicited, or issued for delivery in this state as a Medicare supplement policy if such policy limits or excludes coverage by type of illness, or accident, treatment, or medical condition, except as follows:

(a) Foot care in connection with corns, calluses, flat feet, fallen arches, weak feet, chronic foot strain, or symptomatic complaints of the feet;

(b) Mental or emotional disorders, alcoholism and drug addition, unless coverage for such conditions is purchased as an option;

(c) Illness, treatment, or medical condition arising out of:

1. War or act of war (whether declared or undeclared); participation in a felony, riot, or insurrection; service in the armed forces or units auxiliary thereto;

2. Suicide (sane or insane), attempted suicide, or intentionally self-inflicted injury; or

3. Aviation.

(d) Cosmetic surgery, except that cosmetic surgery shall not include reconstructive surgery when such service is incidental to or follows surgery resulting from trauma, infection, or other diseases or the involved body part;

(e) Care in connection with the detection and correction of manual or mechanical means of structural imbalance, distortion, or subluxation in the human body for purposes of removing nerve interference and the effect thereof, or such interference is the result of or related to distortion, misalignment, or subluxation of or in the vertebral column, except that such coverage must be provided to the extent required by law;

(f) Treatment provided in a governmental hospital; benefits provided under Medicare or other governmental program (except Medicaid), any state or federal workers' compensation, employer's liability for occupational disease, or any motor vehicle no-fault insurance law (except where prohibited by law); services rendered by employees of hospitals, laboratories, or other institutions; services performed by a member of the covered person's immediate family and services for which no charges normally made in the absence of insurance;

(g) Dental care or treatment;

(h) Eye glasses, hearing aids, and examination for the prescription or fitting thereof;

(i) Rest cures, custodial care, transportation, and routine physical examinations; or

(j) Territorial limitations outside the United States.

However, Medicare supplement policies shall not contain, when issued, limitations or exclusions of the type enumerated in paragraphs (a), (e), (i), or (j) of this subsection that are more restrictive than those of Medicare. Medicare supplement policies may exclude coverage for any expense to the extent of any benefit available to the insured under Medicare.

(3) No Medicare supplement policy may use waivers to exclude, limit, or reduce coverage or

benefits for specifically named or described preexisting diseases or physical conditions.

(4) The terms "Medicare supplement," "medigap," and words of similar import shall not be used unless the policy is issued in compliance with KRS 304.14.500 to 304.14.550 and this regulation.

(5) No Medicare supplement insurance policy in force in this state shall contain benefits which duplicate benefits provided by Medicare.

Section 5. Minimum Benefit Standards. An insurance policy shall not be advertised, solicited, or issued for delivery in Kentucky as a Medicare supplement policy if it does not meet the following minimum standards. These are minimum standards and do not preclude the inclusion of other provisions or benefits which are consistent with these standards.

(1) General standards. The following standards apply to Medicare supplement policies and are in addition to all other requirements of this regulation.

(a) A Medicare supplement policy shall not deny a claim for losses incurred more than six (6) months from the effective date of coverage for a preexisting condition. The policy shall not define a preexisting condition more restrictively than a condition for which medical advice was given or treatment was recommended by or received from a physician within six (6) months before the effective date of coverage.

(b) A Medicare supplement policy shall not indemnify against losses resulting from sickness on a different basis than losses resulting from accidents.

(c) A Medicare supplement policy shall provide that benefits designed to cover cost sharing amounts under Medicare will be changed automatically to coincide with any changes in the applicable Medicare deductible amount and copayment percentage factors. Premiums may be modified to correspond with such changes.

(d) A "noncancellable," "guaranteed renewable," or "noncancellable and guaranteed renewable" Medicare supplement policy shall not:

1. Provide for termination of coverage of a spouse solely because of the occurrence of an event specified for termination of coverage of the insured, other than nonpayment of premium; or

2. Be cancelled or nonrenewed by the insurer solely on the grounds of deterioration of health.

(e) Termination of a Medicare supplement policy shall be without prejudice to any continuous loss which commenced while the policy was in force, but the extension of benefits beyond the period during which the policy was in force may be predicated upon continuous total disability of the insured, limited to the duration of the policy benefit period, if any, or payment of the maximum benefits.

(2) Minimum benefit standards.

(a) Coverage for either all or none of Medicare Part A inpatient hospital deductible amount.

(b) Coverage for the daily copayment amount of Medicare Part A eligible expenses for the first eight (8) days per calendar year incurred for skilled nursing facility care.

(c) Coverage for the reasonable cost of the first three (3) pints of blood (or equivalent quantities of packed red blood cells, as defined under federal regulations) under Medicare Part A unless replaced in accordance with federal regulations.

(d)1. Until January 1, 1990, coverage for twenty (20) percent of the amount of Medicare eligible expenses under Part B regardless of hospital confinement, subject to a maximum calendar year out-of-pocket deductible of \$200 of such expenses and to a maximum benefit of at least \$5,000 per calendar year.

2. Effective January 1, 1990, coverage for the copayment amount of Medicare eligible expenses excluding outpatient prescription drugs under Medicare Part B regardless of hospital confinement up to a maximum out-of-pocket amount for Medicare Part B under the Medicare deductible amount.

(e) Effective January 1, 1990, coverage under Medicare Part B for the reasonable cost of the first three (3) pints of blood (or equivalent quantities of packed red blood cells, as defined under federal regulations), unless replaced in accordance with federal regulations.

(f) Effective January 1, 1990, coverage for the copayment amount of Medicare eligible expenses for covered home intravenous therapy drugs (as determined by the Secretary of Health and Human Services) subject to the Medicare outpatient prescription drug deductible amount, if applicable.

(g) Effective January 1, 1990, coverage for the copayment amount of Medicare eligible expenses for outpatient drugs used in immunosuppressive therapy, subject to the Medicare outpatient prescription drug deductible, if applicable.

(4) Medicare eligible expenses. Medicare eligible expenses shall mean health care expenses of the kinds covered by Medicare, to the extent recognized as reasonable by Medicare. Payment of benefits by insurers for Medicare eligible expenses may be conditioned upon the same or less restrictive payment conditions, including determinations of medical necessity, as are applicable to Medicare claims.

Section 6. Standards for Claims Payment under Section 4081 of the Omnibus Budget Reconciliation Act of 1987 (P.L. 100-203). (1) Every person providing Medicare supplement policies shall comply with all provisions of Section 4081 of the Omnibus Budget Reconciliation Act of 1987 (P.L. 100-203).

(2) Compliance with the requirements set forth in subsection (1) of this section must be certified on the Medicare Supplement Insurance Experience Reporting Form.

Section 7. Loss Ratio Standards. (1) Medicare supplement policies shall return to policyholders in the form of aggregate benefits under the policy, for the entire period for which rates are computed to provide coverage, on the basis of incurred claims experience or incurred health care expenses where coverage is provided by a health maintenance organization on a service rather than reimbursement basis, and earned premiums for such period and in accordance with accepted actuarial principles and practices:

(a) At least seventy-five (75) percent of the aggregate amount of premiums earned in the case of group policies; and

(b) At least sixty (60) percent of the aggregate amount of premiums earned in the case of individual policies.

(c) All filings and rate schedules shall demonstrate that actual and expected losses in

relation to premiums comply with the requirements of this section.

(2) Every person providing Medicare supplement policies in this state shall file annually its rates, rating schedule, and supporting documentation, including ratios of incurred losses to earned premiums by number of years of policy duration demonstrating that it is in compliance with the foregoing applicable loss ratio standards and that the period for which the policy is rated is reasonable in accordance with accepted actuarial principles and experience.

(3) For the purposes of this section, policy forms shall be deemed to comply with the loss ratio standards if:

(a) For the most recent year, the ratio of incurred losses to earned premiums for policies or certificates which have been in force for three (3) years or more is greater than or equal to the applicable percentages contained in this section; and

(b) The expected losses in relation to premiums over the entire period for which the policy is rated comply with the requirements of this section.

An expected third year loss ratio which is greater than or equal to the applicable percentage shall be demonstrated for policies or certificates in force less than three (3) years.

(4) As soon as practicable prior to the effective date of Medicare benefit changes required by the Medicare Catastrophic Coverage Act of 1988, every person providing Medicare supplement policies in Kentucky shall file with the commissioner, in accordance with applicable filing procedures:

(a) Appropriate premium adjustments necessary to produce loss ratios as originally anticipated for the applicable Medicare supplement policies. Such supporting documents as necessary to justify the adjustment shall accompany the filing. Every person providing Medicare supplement policies to residents of Kentucky shall make such premium adjustments as are necessary to produce an expected loss ratio under such policies as will conform to the minimum loss ratio standards for Medicare supplement policies and which are expected to result in a loss ratio at least as great as that originally anticipated in the rates used to produce current premiums for such Medicare supplement policies. No premium adjustment which would modify the loss ratio experience under the policy other than the adjustments described in this subsection should be made with respect to a policy at any time other than upon its renewal date or anniversary date. Premium adjustments shall be in the form of refunds or premium credits and shall be made no later than upon renewal if a credit is given, or within sixty (60) days of the renewal date or anniversary date if a refund is provided to the insured or other person paying the premium. Premium adjustments shall be calculated for the period commencing with Medicare benefit changes; and

(b) Any appropriate riders, endorsements, or policy forms needed to accomplish the Medicare supplement insurance modification is necessary to eliminate benefit duplications with Medicare. Any such riders, endorsements, or policy forms shall provide a clear description of the Medicare supplement insurance benefits provided by the Medicare supplement policy.

Section 8. Filing Requirements for Out-of-state Group Policies. All group Medicare supplement policies and all certificates used under such policies in this state shall not be used in this state until filed with and approved by the commissioner.

Section 9. Required Disclosure Provisions. (1) General rules.

(a) Medicare supplement policies shall include a renewal, continuation, or nonrenewal provision. The language or specifications of such provision must be consistent with the type of insurance policy to be issued. Such provision shall be appropriately captioned, shall appear on the first page of the policy, and shall clearly state the duration, where limited, or renewability and the duration of the term of coverage for which the policy is issued and for which it may be renewed.

(b) Except for riders or endorsements by which the insurer effectuates a request made in writing by the insured, exercises a specifically reserved right under a Medicare supplement policy, or is required to reduce or eliminate benefits to avoid duplication of Medicare benefits, all riders or endorsements added to a Medicare supplement policy after the date of issue or at reinstatement or renewal which reduce or eliminate benefits or coverage in the policy shall require a signed acceptance by the insured. After the date of policy issue, any rider or endorsement which increases benefits or coverage with a concomitant increase in premium during the policy term must be agreed to in writing signed by the insured, unless the benefits are required by the minimum standards for Medicare supplement policies, or if the increased benefits or coverage is required by law. Where a separate additional premium is charged for benefits provided in connection with riders or endorsements, such premium charge shall be set forth in the policy.

(c) A Medicare supplement policy which provides for the payment of benefits based on standards described as "usual and customary," "reasonable and customary," or words of similar import, shall include a definition of such terms and an explanation of such terms in its accompanying outline of coverage.

(d) If a Medicare supplement policy contains any limitations with respect to preexisting conditions, such limitations must appear as a separate paragraph of the policy and be labeled as "preexisting condition limitations."

(e) Medicare supplement policies or certificates shall have a notice prominently printed on the first page of the policy or certificate or attached thereto stating in substance that the policyholder or certificate holder shall have the right to return the policy or certificate within thirty (30) days of its delivery and to have the premium refunded if, after examination of the policy or certificate, the insured is not satisfied for any reason.

(f) Insurers issuing insurance policies and certificates thereunder covering accident and sickness and hospital or Medicare expenses or an expense incurred or indemnity basis, other than incidentally, to persons eligible for Medicare by reason of age shall provide to all applicants a Medicare supplement buyer's guide in the form developed jointly by the National Association of Insurance Commissioners and the Health Care Financing Administration. Delivery of the

buyer's guide shall be made whether or not such policies or certificates are advertised, solicited, or issued as Medicare supplement policies as defined in this regulation. Delivery of the buyer's guide shall be made to the applicant at the time of application and acknowledgment of receipt of the buyer's guide shall be obtained by the insurer, except that direct response insurers shall deliver the buyer's guide to the applicant upon request, but not later than the time the policy is delivered.

(2) Notice requirements.

(a) As soon as practicable, but no later than thirty (30) days prior to the annual effective date of any Medicare benefit changes, every insurer providing coverage to a resident of Kentucky under a Medicare supplement policy shall notify its insureds of modifications it has made to Medicare supplement policies. Such notice shall be in a format acceptable to the commissioner. For the years 1989 and 1990, and if prescription drugs are covered in 1991, such notice shall be in the format prescribed in Appendixes A, B, and C. In addition, such notice shall:

1. Include a description of revisions to the Medicare program and a description of each modification made to the coverage provided under the Medicare supplement insurance policy or contract; and

2. Inform each covered person as to when any premium adjustment is to be made due to changes in Medicare.

(b) The notice of benefit modifications and any premium adjustments shall be in outline form and in clear and simple terms so as to facilitate comprehension.

(c) Such notices shall not contain or be accompanied by any solicitation.

(3) Outline of coverage requirements for Medicare supplement policies.

(a) Insurers issuing Medicare supplement policies or certificates for delivery in this state shall provide an outline of coverage to all applicants at the time application is made and, except for direct response insurers, shall obtain an acknowledgment of receipt of such outline from the applicant.

(b) If an outline of coverage is provided at the time of application and the Medicare supplement policy or certificate is issued on a basis which would require revision of the outline, a substitute outline of coverage properly describing the policy or certificate must accompany such policy or certificate when it is delivered and contain the following statement, in no less than twelve (12) point type immediately above the insurer's name:

"NOTICE: READ THIS OUTLINE OF COVERAGE CAREFULLY. IT IS NOT IDENTICAL TO THE OUTLINE OF COVERAGE PROVIDED UPON APPLICATION AND THE COVERAGE ORIGINALLY APPLIED FOR HAS NOT BEEN ISSUED."

(c) The outline of coverage provided to applicants pursuant to this subsection shall be in the form prescribed below:

(INSURER NAME)

OUTLINE OF MEDICARE SUPPLEMENT COVERAGE

1. Read your policy carefully - this outline of coverage provides a very brief description of the important features of your policy. This is not the insurance contract and only the actual policy provisions will control. The

policy itself sets forth in detail the rights and obligations of both you and your insurance company. It is, therefore, important that you READ YOUR POLICY CAREFULLY!

2. Medicare supplement coverage - policies of this category are designed to supplement Medicare by covering some hospital, medical, and surgical services which are partially covered by Medicare. Coverages provided for hospital inpatient charges and some physician charges, subject to any deductibles and copayment provisions which may be in addition to those provided by Medicare, and subject to other limitations which may be set forth in the policy. The policy does not provide benefits for custodial care such as help in walking, getting in and out of bed, eating, dressing, bathing, and taking medicine (this final sentence may be deleted if coverage for custodial care is, in fact, provided).
3. a. (for agents)
Neither (insert insurer's name) nor its agents are connected with Medicare.
b. (for direct response insurers:)
(insert insurer's name) is not connected with Medicare.
4. A brief summary of the major medical benefit gaps in Medicare Parts A and B with a parallel description of supplemental benefits, including dollar amounts (and indexed copayments or deductibles as appropriate), provided by Medicare supplement coverage in the following order:

THIS
POLICY
PAYS YOU
PAY

DESCRIPTION

SERVICE

PART A

Inpatient Hospital Services:
Semi-private Room & Board
Miscellaneous Hospital Services
& Supplies, such as Drugs,
X-rays, Lab Tests & Operating
Room
Skilled Nursing Facility Care
Blood

PARTS A & B

Home Health Services

PART B

Medical Expense:
Services of a Physician/Outpatient
Services
Medical Supplies other than Prescribed
Drugs
Blood
Mammography Screening
Out-of-pocket Maximum
Prescription Drugs

MISCELLANEOUS

Home IV-Drug Therapy
Immunosuppressive Drugs
Respite Care Benefits

IN ADDITION TO THIS OUTLINE OF COVERAGE, (INSURANCE COMPANY NAME) WILL SEND AN ANNUAL NOTICE TO YOU 30 DAYS PRIOR TO THE EFFECTIVE DATE OF MEDICARE CHANGES WHICH WILL DESCRIBE THESE CHANGES AND THE CHANGES IN YOUR MEDICARE SUPPLEMENT COVERAGE.

5. (The following charts shall accompany the outline of coverage:)

Part A
MEDICARE BENEFITS IN

Service	1988	1989	1990	1991
PART A				
Inpatient Hospital Services:	All but \$540 for first 60 days/ benefit period	All but (\$564) deductible for an unlimited number of days/calendar year	All but Part A deductible for an unlimited number of days/calendar year	All but Part A deductible for an unlimited number of days/calendar year
Semi-private Room & Board	All but \$135 a day for 61st-90th days/ benefit period			
Miscellaneous Hospital Services & Supplies, such as Drugs, X-rays, Lab Tests & Operating Room	All but \$270 a day for 91st-150th days (if the individual chooses to use 60 nonrenewable life-time reserve days) Nothing beyond 150 days			

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Skilled Nursing Facility Care	100% of costs for 1st 20 days (after a 3 day prior hospital confinement)	80% of Medicare reasonable costs for first 8 days per calendar year w/out prior hospitalization requirement	80% for 1st 8 days/ calendar year	80% for 1st 8 days/ calendar year
	All but \$67.50 a day for 1st-100th days			
	Nothing beyond 100 days	100% of costs thereafter up to 150 days/calendar year	100% for 9th-150th day/calendar year	100% for 9th-150th day/calendar year
Blood	Pays all costs except nonreplacement fees (blood deductible) for first 3 pints in each benefit period	Pays all costs except payment of deductible (equal to costs for first 3 pints) each calendar year. Part A blood deductible reduced to the extent paid under Part B	All but blood deductible (equal to costs for first 3 pints)	All but blood deductible (equal to costs for first 3 pints)

Part B
MEDICARE BENEFITS IN

Service	1988	1989	1990	1991
PARTS A & B: Home Health Services	Intermittent skilled nursing care and other services in the home (daily skilled nursing care for up to 21 days or longer in some cases) - 100% of covered services and 80% of durable medical equipment under both Parts A & B	Same as '88	Intermittent skilled nursing care for up to 7 days a week for up to 38 days allowing for continuation of services under unusual circumstances; other services, - 100% of covered services and 80% of durable medical equipment under both Parts A & B	Same as '90
PART B Medical Expense: Services of a Physician/Outpatient Services	80% of reasonable charges after an annual \$75 deductible	80% after annual \$75 deductible	80% of reasonable charges after \$75 annual deductible until out-of-pocket maximum is reached. 100% of reasonable charges are covered for remainder of calendar year	Same as '90
Medical Supplies Other than Prescribed Drugs				
Blood	80% of costs except nonreplacement fees (blood deductible) for 1st 3 pints in each benefit period after \$75 deductible	Pays 80% of all costs except payment of deductible (equal to costs for first 3 pints) each calendar year	Same as '89	Same as '89
Mammography Screening			80% of approved charge for elderly and disabled Medicare beneficiaries exams available every other year for women 65 & over	Same as '90

Out-of-pocket Maximum		\$1,370 consisting of Part B \$75 deductible, Part B blood deductible and 20% coinsurance	\$1,370--will be adjusted annually by Secretary of Health & Human Services
Outpatient Prescription Drugs		There is a \$550 total deductible applicable to home IV drug and immunosuppressive drug therapies as noted below	Covered after \$600 deductible subject to 50% coinsurance
Home IV-Drug Therapy		80% of IV therapy drugs subject to \$550 deductible (deductible waived if home therapy is a continuation of therapy initiated in a hospital)	80% of IV therapy drugs subject to standard drug deductible (deductible waived if home therapy is a continuation of therapy drugs initiated in a hospital)
Immunosuppressive Drug Therapy	80% of costs during 1st year following a covered organ transplant (no special drug deductible; only the regular Part B deductible)	Same as '88 for 1st year following covered transplant; 50% of costs during 2nd and following years (subject to \$550 deductible)	Same as '90 (subject to \$600 deductible)
Respite Care Benefit		In-home care for chronically dependent individual covered for up to 80 hours after either the out-of-pocket limit or the outpatient drug deductible has been met	Same as '90

6. A statement that the policy does not cover the following:
 - a. Private duty nursing;
 - b. Skilled nursing home care costs (beyond what is covered by Medicare);
 - c. Custodial nursing home care costs;
 - d. Intermediate nursing home care costs;
 - e. Home health care above the number of visits covered by Medicare;
 - f. Physician charges (above Medicare's reasonable charges);
 - g. Drugs (other than prescription drugs furnished during a hospital or skilled nursing facility stay);
 - h. Care received outside the United States; and
 - i. Dental care or dentures, checkups, routine immunizations, cosmetic surgery, routine foot care, and examinations for the cost of eyeglasses or hearing aids.
7. A description of any policy provisions which exclude, eliminate, resist, reduce, limit, delay, or in any manner operate to qualify payments of benefits described in paragraph 4 above, including conspicuous statements:
 - a. That the chart summarizing Medicare benefits only briefly describes such benefits; and
 - b. That the Health Care Financing Administration or its Medicare publications should be consulted for

8. A description of policy provisions respecting renewability or continuation of coverage, including any reservation of rights to change premium.
9. The amount of premium for this policy.

(4) Notice regarding policies or subscriber contracts which are not Medicare supplement policies. Any accident or sickness insurance policy (other than a Medicare supplement policy), disability income policy, basic, catastrophic, or major medical expense policy, or single premium nonrenewable policy issued for delivery in Kentucky to persons eligible for Medicare by reason of age shall notify insureds under such policy that the policy is not a Medicare supplement policy. Such notice shall either be printed on or attached to the first page of the outline of coverage delivered to insureds under the policy, or if no outline of coverage is delivered, printed on or attached to the first page of the policy or certificate delivered to insureds. Such notice shall be in no less than twelve (12) point type and shall contain the following language:

"THIS (POLICY OR CERTIFICATE) IS NOT A MEDICARE SUPPLEMENT POLICY. If you are eligible for Medicare, review the Medicare supplement buyer's guide available from the insurance company."

Section 10. Requirements for Replacement. (1) Prohibited compensation for replacement with the same insurer, nonprofit hospital, medical-surgical, dental, and health service corporation, or health maintenance organization. No insurer, nonprofit hospital, medical-surgical, dental, or health service corporation, or health maintenance organization shall provide compensation to its agents or other producers which is greater than the renewal compensation which would have been paid on an existing policy if the existing policy is replaced by another policy with the same company where the new policy benefits are substantially similar to the benefits under the old policy and the old policy was issued by the same company or group of companies.

(2) Comparison statement. When a Medicare supplement policy is to replace another Medicare supplement policy, there shall be presented to the applicant, no later than at the time of taking the application, a comparison statement which shall be in the form prescribed by the commissioner. Direct response insurers shall present the comparison statement to the applicant not later than at the time of delivery of the policy. Agents shall obtain the signature of the applicant on the comparison statement and shall sign the comparison statement and send the comparison statement to the insurer. A copy of the comparison statement shall be attached to the replacement policy.

(3) Application forms shall include a question designed to elicit information as to whether a Medicare supplement policy or certificate is intended to replace any other accident and sickness policy or certificate presently in force. A supplementary application or other form to be signed by the applicant containing such a question may be used.

(4) Upon determining that a sale will involve replacement, an insurer (other than a direct response insurer), or its agent, shall furnish the applicant, prior to issuance or delivery of the Medicare supplement policy or certificate, a notice regarding replacement of accident and sickness insurance. One (1) copy of such notice shall be provided to the applicant and an additional copy signed by the applicant shall be retained by the insurer. A direct response insurer shall deliver to the applicant at the time of the issuance of the policy the notice regarding replacement of accident and sickness coverage. In no event, however, will such a notice be required in the solicitation of "accident only" and "single premium nonrenewable" policies.

(5) The notice required by subsection (4) of this section for an insurer (other than a direct response insurer) shall be provided in substantially the following form:

NOTICE TO APPLICANT REGARDING REPLACEMENT
OF ACCIDENT AND SICKNESS INSURANCE

According to (your application or information you have furnished), you intend to lapse or otherwise terminate existing accident and sickness insurance and replace it with a policy to be issued by (insurer name). Your new policy provides thirty (30) days within which you may decide without cost whether you desire to keep the policy. For your own information and protection, you should be aware of and seriously consider certain factors which may affect the

insurance protection available to you under the new policy.

(a) Health conditions which you may presently have (so-called preexisting conditions) may not be immediately or fully covered under the new policy. This could result in denial or delay of a claim for benefits under the new policy, whereas a similar claim might have been payable under your present policy (this paragraph may be modified if preexisting conditions are, in fact, covered under the new policy).

(b) You may wish to secure the advice of your present insurer or its agent regarding the proposed replacement of your present policy. This is not only your right, but it is also in your best interest to make sure you understand all the relevant factors involved in replacing your present coverage.

(c) If, after due consideration, you still wish to terminate your present policy and replace it with new coverage, be certain to truthfully and completely answer all questions on the application concerning your medical and health history. Failure to include all material medical information on an application may provide a basis for the insurer to deny any future claims and to refund your premium as though your policy had never been in force. After the application has been completed and before you sign it, reread it carefully to be certain that all information has been recorded properly.

The above "Notice to Applicant" was delivered to me on:

_____ Date

_____ Applicant's Signature

(6) The notice required by subsection (4) of this section for a direct response insurer shall be as follows:

NOTICE TO APPLICANT REGARDING REPLACEMENT
OF ACCIDENT AND SICKNESS INSURANCE

According to (your application or information you have furnished) you intend to lapse or otherwise terminate existing accident and sickness insurance and replace it with the policy delivered with this notice issued by (insurer name). Your new policy provides thirty (30) days within which you may decide without cost whether you desire to keep the policy. For your own information and protection, you should be aware of and seriously consider certain factors which may affect the insurance protection available to you under the new policy.

(a) Health conditions which you may presently have (so-called preexisting conditions) may not be immediately or fully covered under the new policy. This could result in denial or delay of a claim for benefits under the new policy, whereas a similar claim might have been payable under your present policy.

(b) You may wish to secure the advice of your present insurer or its agent regarding the proposed replacement of your present policy. This is not only your right, but it is also in your best interest to make sure you understand all the relevant factors involved in replacing your present coverage.

(c) (To be included only if the application is attached to the policy). If, after due

consideration, you still wish to terminate your present policy and replace it with new coverage, read the copy of the application attached to your new policy and be sure that all questions are answered fully and correctly. Omissions or misstatements in the application could cause an otherwise valid claim to be denied. Check the application and write to (insurer name and address) within ten (10) days if any information is not correct and complete, or if any past medical history has been left out of the application.

Insurer Name

Section 11. Filing Requirements for Advertising of Medicare Supplement Policies. (1) Every insurer, nonprofit hospital, medical-surgical, dental, and health service corporation, or health maintenance organization providing Medicare supplement policies in Kentucky shall provide a copy of any Medicare supplement policy advertisement intended for use in Kentucky whether through written, radio, or television, to the commissioner prior to such use. Advertisements need not be approved prior to use, but an advertisement shall not be used if it has been disapproved by the commissioner and notice of such disapproval has been given to the insurer, nonprofit hospital, medical-surgical, dental, and health service corporation, or health maintenance organization.

(2) Insurers and agents shall not use the names and addresses of persons purchased as "leads" unless the solicitation material used to obtain the names and addresses of the "leads" are filed as advertisements as required by this section. Insurers and agents shall not use such "leads" if the solicitation materials have been disapproved by the commissioner.

Section 12. Policy Delivery. If a Medicare supplement policy is not delivered by mail, the agent or insurer shall obtain a signed and dated delivery receipt from the insured. If the delivery receipt is obtained by an agent, the agent shall forward the delivery receipt to the insurer.

Section 13. Duplicate Benefits. (1) No insurer, nonprofit hospital, medical-surgical, dental, and health service corporation, or health maintenance organization, or agent thereof, may sell a policy to an individual entitled to benefits under Medicare or under any other policy with knowledge that such policy substantially duplicates health benefits to which such individual is otherwise entitled other than as a recipient of medical assistance benefits under Medicaid. For purposes of this paragraph, benefits which are payable to on or behalf of an individual without regard to other health benefit coverage of such individual shall not be considered duplicative.

(2) Application forms shall include a question designed to elicit information as to whether the insurance to be issued duplicates other health insurance presently in force.

Section 14. Transition of Medicare Supplement Policy Benefits and Premiums Due to Changes in Medicare. (1) This section is to assure the orderly implementation and conversion of Medicare supplement policy benefits and premiums

due to changes in Medicare, to provide for reasonable standardization of the coverage, terms, and benefits of Medicare supplement policies, to facilitate public understanding of Medicare supplement policies, to eliminate provisions contained in Medicare supplement policies which may be misleading or confusing in connection with the purchase of such policies, to eliminate Medicare supplement policy provisions which may duplicate Medicare benefits, to provide full disclosure of Medicare supplement policy benefits and benefit changes, and to provide refunds of premiums associated with benefits duplicating Medicare benefits.

(2) This section shall take precedence over other requirements relating to Medicare supplement policies only to the extent necessary to assure that benefits are not duplicated, that applicants receive adequate notice and disclosure of changes in Medicare supplement policies, that appropriate premium adjustments are made in a timely manner, and that premiums are reasonable in relation to benefits. Except as otherwise provided, this section shall apply to:

(a) All Medicare supplement policies delivered, issued for delivery, or which are otherwise subject to the jurisdiction of Kentucky on or after the effective date of this regulation; and

(b) All certificates issued under group Medicare supplement policies described in paragraph (a) of this subsection.

(3) Benefit conversion requirements for existing Medicare supplement policies.

(a) Effective January 1, 1989, no Medicare supplement policy or certificate in force in this state shall contain benefits which duplicate benefits provided by Medicare.

(b) General requirements.

1. No later than thirty (30) days prior to the annual effective date of Medicare benefit changes mandated by the Medicare Catastrophic Coverage Act of 1988, every insurer, nonprofit hospital, medical-surgical, dental, and health service corporation, and health maintenance organization providing Medicare supplement policies in Kentucky shall notify its policyholders of modifications it has made to Medicare supplement policies. Such notice shall be in a format prescribed by the commissioner.

a. Such notice shall include a description of the revisions to Medicare and a description of each modification made to the coverage provided under the Medicare supplement policy.

b. The notice shall inform each policyholder as to when any premium adjustment due to changes in Medicare benefits will be made.

c. The notice of benefit modifications and any premium adjustments shall be in outline form and in clear and simple terms so as to facilitate comprehension. Such notice shall not contain or be accompanied by any solicitation.

2. No modifications to an existing Medicare supplement policy shall be made at the time of or in connection with the notice requirements of this regulation except to the extent necessary to eliminate duplication of Medicare benefits and any modifications necessary under the policy or contract to provide indexed benefit adjustment.

3. As soon as practical, but no later than forty-five (45) days after the effective date of the Medicare benefit changes, every insurer, nonprofit hospital, medical-surgical, dental,

and health service corporation, or health maintenance organization providing Medicare supplement policies in Kentucky shall file with the commissioner, in accordance with the applicable filing procedures in this state:

a. Appropriate premium adjustments necessary to produce loss ratios as originally anticipated for the applicable policies or contracts. Such supporting documents as necessary to justify the adjustment shall accompany the filing.

b. Any appropriate riders, endorsements, or policy forms need to accomplish Medicare supplement policy modifications necessary to eliminate duplications with Medicare. Any such riders, endorsements, or policy forms shall provide a clear description of the Medicare supplement policy benefits provided.

(4) Upon satisfying the filing and approval requirements of this state, every insurer, nonprofit hospital, medical-surgical, dental, and health service corporation, or health maintenance organization providing Medicare supplement policies in Kentucky shall provide each covered person with any rider, endorsement, or policy form necessary to eliminate any benefit duplications under the Medicare supplement policy with benefits provided by Medicare.

(5) No insurer, nonprofit hospital, medical-surgical, dental, and health service corporation, or health maintenance organization shall require any person covered under a Medicare supplement policy which was in force prior to January 1, 1989, to purchase additional coverages under such policy unless such additional coverage was provided for in the policy.

(6) Every insurer, nonprofit hospital, medical-surgical, dental, and health service corporation, or health maintenance organization providing Medicare supplement policies in this state shall make such premium adjustments as are necessary to produce an expected loss ratio under such policy or contract as will conform with the minimum loss ratio standards for Medicare supplement policies and which is expected to result in a loss ratio as great as that originally anticipated. No premium adjustment which would modify the loss ratio experience under the policy other than the adjustments described herein should be made with respect to a policy at any time other than upon its renewal date. Premium adjustments shall be in the form of refunds or premium credits and shall be made no later than upon renewal if a credit is given, or within sixty (60) days of the renewal date if a refund is provided to the policyholder or other person paying the premium.

(7) Requirements for new Medicare supplement policies and certificates.

(a) Effective January 1, 1989, no Medicare supplement policy shall be delivered or issued for delivery in Kentucky if it provides benefits

which duplicate benefits provided by Medicare. No Medicare supplement policy or certificate shall provide less benefits than those required under KRS 304.14-500 to 304.14-550 and this regulation, except where duplication of Medicare benefits would result.

(b) General requirements.

1. Within ninety (90) days of the effective date of this regulation, every insurer, nonprofit hospital, medical-surgical, dental, and health service corporation, or health maintenance organization required to file Medicare supplement policies with the Commissioner shall file new Medicare supplement policies or contracts which eliminate any duplication of Medicare benefits.

2. The filing required under subparagraph 1 of this paragraph shall provide for loss ratios which are in compliance with all minimum standards.

3. Every applicant for a Medicare supplement policy shall be provided with an outline of coverage which simply and accurately describes benefits provided by Medicare and policy benefits and limitations.

Section 15. Severability. If any provision of this regulation or the application of this regulation to any person or circumstance is for any reason held to be invalid, the remainder of the regulation and the application of such provision to other persons or circumstances shall not be affected thereby.

Section 16. Repeal of 806 KAR 17:060; Effective date. (1) 806 KAR 17:060, Minimum standards for Medicare supplement policies, is repealed effective January 1, 1989.

(2) This regulation shall become effective upon completion of its review pursuant to KRS Chapter 13A.

LEROY MORGAN, Commissioner

THEODORE T. COLLEY, Secretary

APPROVED BY AGENCY: November 17, 1988

FILED WITH LRC: November 23, 1988 at 11 a.m.

PUBLIC HEARING: Persons with an interest in the subject matter of the proposed regulation may comment at a public hearing scheduled for January 23, 1989, at 9 a.m. (ET), in the offices of the Kentucky Department of Insurance, 229 West Main Street, Frankfort, Kentucky 40601. Written comments may be submitted to Leroy Morgan, Commissioner, Kentucky Department of Insurance, P.O. Box 517, Frankfort, Kentucky 40602. Written comments must be received prior to 9 a.m. (ET) on January 23, 1989, in order to receive consideration. The public hearing scheduled above may be cancelled if no one notifies the Commissioner of Insurance at least five (5) days prior to the hearing that they will be in attendance at the hearing to comment.

APPENDIX A

(COMPANY NAME)

NOTICE OF CHANGES IN MEDICARE AND YOUR MEDICARE SUPPLEMENT INSURANCE - 1989

Your health care benefits provided by the federal Medicare program will change beginning January 1, 1989. Additional changes will occur on medical benefits in following years. The major changes are summarized below. These changes will affect hospital, medical and other services and supplies provided under Medicare. Because of these changes, your Medicare supplement coverage provided by (Company Name) will change, also. The following outline briefly describes the modifications in Medicare and in your Medicare supplement coverage. Please read carefully!

(A brief description of the revisions to Medicare Parts A & B with a parallel description of supplemental benefits with subsequent changes, including dollar amounts, provided by the Medicare supplement coverage in substantially the following format.)

SERVICES	MEDICARE BENEFITS		YOUR MEDICARE SUPPLEMENT COVERAGE	
	Effective 1/1/1989		Your 1988	Effective 1/1/1989
	Medicare Now Pays Per Benefit Period	Medicare will Pay per Calendar Year	Coverage Per Benefit Period	Your Coverage will Pay Per Calendar Year
MEDICARE PART A SERVICES & SUPPLIES	First 60 days - All but \$540	Unlimited number of hospital days after \$() deductible		
	61st to 90th day - All but \$135 a day			
	91st to 150th day - All but \$270 a day (if individual chooses to use 60 nonrenewable lifetime reserve days)			
	Beyond 150th day - Nothing			
SKILLED NURSING FACILITY CARE	Requires a 3 day prior stay and enter the facility generally within 30 days after hospital discharge	There is no prior confinement require- ment for this benefit		
	First 20 days - 100% of costs	First 8 days - All but \$() a day		
	21st through 100th day - All but \$67.50 a day	9th through 150th day - 100% of costs		
	Beyond 100 days - Nothing	Beyond 150 days - Nothing		
MEDICARE PART B SERVICES & SUPPLIES	80% of allowable charges (after \$75 deductible)	NOTE: Medicare benefits change on January 1, 1990 as follows: 80% of allowable charges (after \$(75) deductible) until an annual Medicare Catastrophic limit is met. 100% of allowable charges for the remainder of the calendar year. The limit in 1990 is \$1370* and will be adjusted on an annual bases.		
PRESCRIPTION DRUGS	Inpatient prescription drugs only	In 1989 Medicare covers inpatient prescription drugs only.		

Effective 1/1/1990 per
calendar year 80% of
allowable charges for
home intravenous (IV)
therapy drugs and 50% of
allowable charges for
immunosuppressive drugs
after (\$550 in 1990)
calendar year deductible
is met.

Effective 1/1/1991 per
calendar year inpatient
prescription drugs: 50%
of allowable charges
for all other outpatient
prescription drugs
after a \$600 calendar
year deductible is met
(the deductible will
change). Coverage will
increase to 60% of
allowable charges in 1992
and to 80% of allowable
charges from 1993 on.

*Expenses that count toward the Part B Medicare Catastrophic Limit include: the Part B deductible and copayment charges and the Part B blood deductible charges.

(ANY ADDITIONAL BENEFITS)

(Describe any coverage provisions changing due to Medicare modifications.)

(Include information about premium adjustments that may be necessary due to changes in Medicare benefits, or when premium changes, information will be sent.)

This chart summarizing the changes in your Medicare benefits and in your Medicare supplement provided by (company) only briefly describes such benefits. For information on your Medicare benefits contact your social security office or the health-care financing administration. For information on your Medicare supplement (policy) contact:

(Company or for an individual policy - name of agent) (Address/Phone number)

APPENDIX B

(COMPANY NAME)

NOTICE OF CHANGES IN MEDICARE AND YOUR MEDICARE SUPPLEMENT COVERAGE - 1990

Your health care benefits provided by the federal Medicare program will change beginning January 1, 1990. Additional changes will occur in medical benefits in following years. The major changes are summarized below. These changes will affect hospital, medical and other services and supplies provided under Medicare. Because of these changes your Medicare supplement coverage provided by (Company Name) will change, also. The following outline briefly describes the modifications in Medicare and in your Medicare supplement coverage. Please read this carefully!

(A brief description of the revisions to Medicare Parts A & B with a parallel description of supplemental benefits with subsequent changes, including dollar amounts, provided by the Medicare supplement coverage in substantially the following format.)

SERVICES	MEDICARE BENEFITS		YOUR MEDICARE SUPPLEMENT COVERAGE	
	Effective 1/1/1990	Your Coverage	Effective 1/1/1990	Your coverage will Pay
	Medicare Now Pays Per Calendar Year	Medicare will Pay per Calendar Year	Now Pays Per Calendar Year	Per Calendar Year
MEDICARE PART A SERVICES & SUPPLIES	Unlimited number of hospital days after \$() deductible			
SKILLED NURSING FACILITY CARE	There is no prior confinement require- ment for this benefit			
	First 8 days - All but \$() a day			

9th through 150th day -
100% of costs

Beyond 150 days -
Nothing

MEDICARE PART B SERVICES & SUPPLIES 80% of allowable charges (after \$75 deductible) until an annual Medicare Catastrophic limit* is met. 100% of allowable charges for the remainder of the calendar year. The limit in 1990 is \$1370 and will be adjusted on an annual bases.

PRESCRIPTION DRUGS Inpatient prescription drugs. 80% of allowable charges for home intravenous (IV) therapy drugs and 50% of allowable charges for immunosuppressive drugs after (\$550 in 1990) calendar year deductible is met.

*Expenses that count toward the Part B Medicare Catastrophic Limit include: the Part B deductible and copayment charges and the Part B blood deductible charges.

(ANY ADDITIONAL BENEFITS)

(Describe any coverage provisions changing due to Medicare modifications.)

(Include information about premium adjustments that may be necessary due to changes in Medicare benefits, or when premium changes, information will be sent.)

This chart summarizing the changes in your Medicare benefits and in your Medicare supplement provided by (company) only briefly describes such benefits. For information on your Medicare benefits contact your social security office or the health-care financing administration. For information on your Medicare supplement (policy) contact:

(Company or for an individual policy - name of agent) (Address/Phone number)

APPENDIX C

(COMPANY NAME)

NOTICE OF CHANGES IN MEDICARE AND YOUR MEDICARE SUPPLEMENT COVERAGE - 1991

Your health care benefits provided by the federal Medicare program will change beginning January 1, 1991. Additional changes will occur in medical benefits in following years. The major changes are summarized below. These changes will affect hospital, medical and other services and supplies provided under Medicare. Because of these changes your Medicare supplement coverage provided by (Company Name) will change, also. The following outline briefly describes the modifications in Medicare and in your Medicare supplement coverage. Please read this carefully!

(A brief description of the revisions to Medicare Parts A & B with a parallel description of supplemental benefits with subsequent changes, including dollar amounts, provided by the Medicare supplement coverage in substantially the following format.)

SERVICES	MEDICARE BENEFITS		YOUR MEDICARE SUPPLEMENT COVERAGE	
	Effective 1/1/1991	Your Coverage	Effective 1/1/1991	Your coverage will Pay
	Medicare Now Pays	Medicare will Pay per	Now Pays Per	Your coverage will Pay
	Per Calendar Year	Calendar Year	Calendar Year	Per Calendar Year
MEDICARE PART A SERVICES & SUPPLIES	Unlimited number of hospital days after \$() deductible			
SKILLED NURSING FACILITY CARE	There is no prior confinement requirement for this benefit			

First 8 days - All
but \$() a day

9th through 150th day -
100% of costs

Beyond 150 days -
Nothing

MEDICARE PART B SERVICES & SUPPLIES 80% of allowable charges (after \$75 deductible) until an annual Medicare Catastrophic limit* is met. 100% of allowable charges for the remainder of the calendar year. The limit in 1991 is \$() and will be adjusted on an annual bases.

<p>PRESCRIPTION DRUGS</p>	<p>Inpatient prescription drugs. 50% of allowable charges for all other outpatient prescription drugs, until \$600 calendar year deductible is met</p>	<p>Inpatient prescription drugs 60% of allowable charges for all other outpatient prescription drugs, until \$652 calendar year deductible is met. Coverage will increase to 80% of allowable charges from 1993 on, and deductible will be adjusted on an annual basis.</p>
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*Expenses that count toward the Part B Medicare Catastrophic Limit include: the Part B deductible and copayment charges and the Part B blood deductible charges.

(ANY ADDITIONAL BENEFITS)

(Describe any coverage provisions changing due to Medicare modifications.)

(Include information about premium adjustments that may be necessary due to changes in Medicare benefits, or when premium changes, information will be sent.)

This chart summarizing the changes in your Medicare benefits and in your Medicare supplement provided by (company) only briefly describes such benefits. For information on your Medicare benefits contact your social security office or the health-care financing administration. For information on your Medicare supplement (policy) contact:

(Company or for an individual policy - name of agent) (Address/Phone number)

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Patrick Watts

Need for the Proposed Regulation: The Omnibus Budget Reconciliation Act of 1987 and the Medicare Catastrophic Coverage Act of 1988 both amended Section 1882 of Title 18 of the Social Security Act, 42 U.S.C. §1395ss. This federal law requires states to set minimum standards for Medicare supplement insurance policies which are substantially identical to the minimum standards established under the National Association of Insurance Commissioners Medicare Supplement Insurance Minimum Standards Model Act and Model Regulation to implement the NAIC Medicare Supplement Insurance Minimum Standards Model Act. Due to changes in the Medicare program by the Congress, states are required to amend their regulations relating to Medicare supplement insurance. Federal law requires this action to be taken within one year of September 20, 1988, the date on which the National Association of Insurance Commissioners adopted revisions to the model legislation and regulation set forth above. Federal law does allow additional time

for those states which require a legislative change and whose legislatures are not scheduled to meet in 1989. Minor changes to KRS 304.14-500 through 304.14-550 will be needed and will be proposed by the department. However, it is believed that Kentucky will be able to comply with the revised minimum standards without legislative action.

(1) Type and number of entities affected: The proposed regulation will affect the approximately 100 insurers writing Medicare supplement insurance in Kentucky. The proposed regulation will also affect approximately 35,000 insurance agents who have authority to sell health insurance, although not all of those agents are actively engaged in the sale of Medicare supplement insurance. The proposed regulation will also affect an unknown number of Medicare supplement insurance policyholders.

(a) Direct and indirect costs or savings to those affected:

1. First year: These minimum standards are imposed by federal law. Therefore, the proposed regulation imposes no costs or savings to those affected.

2. Continuing costs or savings: The proposed regulation imposes minimum standards required by federal law. Therefore, the proposed regulation has no costs or savings.

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: The proposed regulation imposes minimum standards required by federal law, and, therefore, the reporting and paperwork requirements are not imposed by the department. The requirement of a comparison statement for replacement of involving a Medicare supplement insurance policy (see Section 10) is not part of the model regulation.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The regulation is required by federal law, and, therefore, costs or savings are not attributable to the proposed regulation.

2. Continuing costs or savings: The proposed regulation is required by federal law, and, therefore, continuing costs or savings are imposed by federal law, not the proposed regulation.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None that are not imposed by federal law.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: 42 U.S.C. §1395ss requires states to have regulations imposing minimum standards for Medicare supplement insurance policies or the federal government will assume regulation of such policies. Therefore, there is no alternative (other than allowing federal regulation) to having minimum standards for Medicare supplement insurance policies.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: KRS 304.14-550 requires Medicare supplement insurers to have a ten day "free look" provision under which policyholders may return a Medicare supplement insurance policy to the insurer for any reason and receive a full premium refund if the policy is returned to the insurer within ten days of delivery to the insured. Section 13 of the model regulation, which is the minimum standard imposed by federal law, requires a 30 days free look period. Section 9(1)(e) of the proposed regulation imposes a 30 day free look period in conformity with the model regulation on the theory that, even though in conflict with KRS 304.14-550, insurers will not object to it because it is part of the model regulation. The Department plans to propose legislation to amend KRS 304.14-150 to provide for a 30 day free look period.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied? Tiering is recognized in distinctions between insurers which sell Medicare supplement insurance through agents and through direct response marketing, distinctions between individual and group

policies, and distinctions between the benefits provided by policies.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. §1395ss.

2. State compliance standards. State compliance standards consist of the National Association of Insurance Commissioners Model Regulation to implement the NAIC Medicare Supplement Insurance Minimum Standards Model Act. The current version of this regulation is 806 KAR 17:060, which is based on the NAIC Model Regulation as it existed prior to September 20, 1988. One difference between the Model Regulation and the proposed regulation is that Section 10(2) of the proposed regulation requires insurers to provide a comparison statement for a Medicare supplement policy which is proposed to replace an existing Medicare supplement policy. The Model Regulation does not require a comparison statement.

Another distinction between the proposed regulation and the model regulation is that Section 4(1) of the proposed regulation prohibits a Medicare supplement policy from containing a probationary or elimination period. The model regulation does not contain this restriction. An elimination period is a type of deductible which provides that no benefits may be payable for a length of time beginning with the first day of illness and that benefits are paid only for costs incurred after the end of the elimination period.

Another difference between the proposed regulation and the model is that Section 12 of the proposed regulation requires a signed delivery receipt for any policy not delivered by mail. This requirement does not appear in the model.

The proposed regulation prohibits insurers or agents from using "leads" purchased from another person unless the solicitation materials used by such person have been filed as advertisement under Section 11. The model does not contain this specific provision, although its language arguably could extend to it.

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. §1395ss requires states to adopt standards at least as stringent as those set forth in the NAIC model regulation.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The two items set forth above which are not contained in the model regulation differ from the federal mandate in that they are beyond the minimum required standards, but they do not violate federal law because the proposed regulation is at least as stringent as the model regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The requirement that a comparison statement, that is, a direct comparison of proposed replacement Medicare supplement insurance with existing Medicare supplement insurance, is highly beneficial to the policyholder in determining whether a replacement transaction is appropriate. A similar requirement has been part of 806 KAR 17:060 since 1982.

The prohibition of elimination periods in Medicare supplement policies is beneficial to

policyholders in that they will have greater benefits. Of course, insurers are permitted to impose preexisting condition waiting periods of up to six months, which is provided for in both the model regulation and the proposed regulation. The prohibition against an elimination period has been part of 806 KAR 17:060 since 1982.

The requirement of a signed delivery receipt in Section 12 is to provide evidence of delivery of a policy to mark the beginning of the "free look" period required by Section 9(1)(e). The department has encountered problems when agents deliver policies, insureds try to return them, and there is a dispute as to whether the policy was returned within the "free look" period.

Prohibiting insurers and agents from using "leads" unless the solicitation materials used to obtain the "leads" is necessary to suppress the unfair or deceptive business practices of persons obtaining "leads" for sale to insurers and agents. Typically, such persons will send a mailer to a senior citizen offering information on medicare or social security and will call themselves "Federal Medicare Division," or some similar name, with a return address in Washington, D.C. The responses are received at the Washington address and then forwarded to an address (sometimes a post office box) in the midwest. The "leads" are then sold to insurers and agents, who often do not bring the consumer information on medicare or social security, but instead try to sell the consumer insurance. By requiring solicitation materials to be filed by insurers or agents purchasing "leads," the activities of so-called "lead" companies can be regulated more effectively.

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services

907 KAR 1:382. Incorporation by reference of the Preventive Health Services Manual.

RELATES TO: KRS 205.520, Title XIX of the Social Security Act

STATUTORY AUTHORITY: KRS 194.050

NECESSITY AND FUNCTION: The Cabinet for Human Resources has the responsibility to administer the Medical Assistance Program in accordance with Title XIX of the Social Security Act and KRS 205.520. KRS 205.520 empowers the cabinet to comply with any requirement that is imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This regulation incorporates into regulatory form, by reference, materials used by the cabinet in the implementation of the preventive health services component of the Medical Assistance Program. In the event of a conflict between manual materials incorporated by reference in this regulation and the primary subject administrative regulations of the cabinet relating to this component, the latter shall prevail.

Section 1. Incorporation by Reference. The cabinet incorporates by reference the Preventive Health Services Manual, dated October 26, 1988, used in the implementation of this component of the Kentucky Medical Assistance Program. This manual contains the policies and procedures issued by the cabinet for the implementation of this program element including benefit

descriptions and operating instructions used by agency staff and participating providers.

Section 2. This manual incorporated by reference may be reviewed Monday through Friday between the hours of 8 a.m. and 4:30 p.m., Eastern time, in the Office of the Commissioner, Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky. Copies may be obtained from that office upon payment of an appropriate fee which will not exceed approximate cost.

ROY BUTLER, Commissioner

HARRY J. COWHERD, M.D., Secretary

APPROVED BY AGENCY: December 2, 1988

FILED WITH LRC: December 14, 1988 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 23, 1989 at 9 a.m. in the Department for Health Services Auditorium, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by January 18, 1988, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street - 4 West, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Roy Butler

(1) Type and number of entities affected: All participating providers of preventive health services are potentially affected.

(a) Direct and indirect costs or savings to those affected: None

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: None

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives were identified.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to

harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: There is no direct or indirect cost or savings to affected entities because this administrative regulation adopts manual materials incorporated by reference that outline procedures and operating instructions for agency staff and participating providers. Any cost or indirect cost or savings would be addressed in the primary component administrative regulation.

TIERING: Was tiering applied? No. Federal Medicaid regulations require that similarly situated providers be treated in a similar manner.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. This regulation incorporates by reference manual material used by agency staff and participating providers and is not federally mandated.

2. State compliance standards. This regulation incorporates by reference manual material used by agency staff and participating providers and contains no state compliance standards.

3. Minimum or uniform standards contained in the federal mandate. No

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This regulation incorporates by reference manual material used by agency staff and participating providers. Stricter requirements or responsibilities are not imposed.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. No additional standards, requirements, or responsibilities are imposed.

CABINET FOR HUMAN RESOURCES Department for Medicaid Services

907 KAR 1:427. Incorporation by reference of the Primary Care Services Manual.

RELATES TO: KRS 205.520, Title XIX of the Social Security Act

STATUTORY AUTHORITY: KRS 194.050

NECESSITY AND FUNCTION: The Cabinet for Human Resources has the responsibility to administer the Medical Assistance Program in accordance with Title XIX of the Social Security Act and KRS 205.520. KRS 205.520 empowers the cabinet to comply with any requirement that is imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This regulation incorporates into regulatory form, by reference, materials used by the cabinet in the implementation of the primary care services component of the Medical Assistance Program. In the event of a conflict between manual materials incorporated by reference in this regulation and the primary subject administrative regulations of the cabinet relating to this component, the latter shall prevail.

Section 1. Incorporation by Reference. The cabinet incorporates by reference the Primary Care Services Manual, revised November 1, 1988,

used in the implementation of this component of the Kentucky Medical Assistance Program. This manual contains the policies and procedures issued by the cabinet for the implementation of this program element including benefit descriptions and operating instructions used by agency staff and participating providers.

Section 2. This manual incorporated by reference may be reviewed Monday through Friday between the hours of 8 a.m. and 4:30 p.m., Eastern time, in the Office of the Commissioner, Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky. Copies may be obtained from that office upon payment of an appropriate fee which will not exceed approximate cost.

ROY BUTLER, Commissioner

HARRY J. COWHERD, M.D., Secretary

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REGULATORY IMPACT ANALYSIS

Agency Contact Person: Roy Butler

(1) Type and number of entities affected: All participating providers of primary care services are potentially affected.

(a) Direct and indirect costs or savings to those affected: None

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: None

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives were identified.

(5) Identify any statute, administrative

regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: There is no direct or indirect cost or savings to affected entities because this administrative regulation adopts manual materials incorporated by reference that outline procedures and operating instructions for agency staff and participating providers. Any cost or indirect cost or savings would be addressed in the primary component administrative regulation.

TIERING: Was tiering applied? No. Federal Medicaid regulations require that similarly situated providers be treated in a similar manner.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There is no federal statute or regulation constituting a federal mandate for the Medicaid Program.

2. State compliance standards. This regulation incorporates by reference manual material used by agency staff and participating providers and contains no state compliance standards.

3. Minimum or uniform standards contained in the federal mandate. This regulation does not set minimum or uniform standards.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Not applicable. This regulation does not set stricter requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. No additional standards or responsibilities are imposed.

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
Minutes of the December 5, 1988 Meeting

The December meeting of the Administrative Regulation Review Subcommittee was held on Monday, December 5, 1988 at 2 p.m. in Room 107. Representative Mark D. O'Brien, Chairman, called the meeting to order, and the secretary called the roll. On motion of Representative Meyer, seconded by Senator McCuiston, the minutes of the November 1, 1988 meeting were approved.

Present December 5, 1988 were:

Members: Representative Mark D. O'Brien, Chairman; Senator Pat McCuiston; Representatives Jim Bruce and Joe Meyer.

Guests: Scott Akers, Calvert R. Bratton, Joe G. Hall, Gary C. Morris, Jim Oliver, Barbara Rutigliano, Tommy Thompson, Daniel C. Wilson, Revenue Cabinet; David W. Carby, Board of Medical Licensure; Lisette Kautzmann, Bill Pettus, Occupational Therapy Board; Coleman R. Gilbert, H. Bradley Smith, Justice Cabinet; Michael Bradley, Ellen Tharpe, Corrections Cabinet; David Garnett, Motor Vehicle Commission; Gary Bale, Jim Judge, Department of Education; A. J. Anderson, Marcia A. Burklow, Roy Butler, Mel Counts, Edward Crews, William Durrett, III, Ked Fitzpatrick, Vic Gausepohl, Ryan M. Halloran, N. Clifton Howard, Clifford Jennings, Carrie Mathis, Anita Moore, E. Edsel Moore, Bob Nelson, Dr. Donald Ralph, Larry Taylor, Mark Yancey, Cabinet for Human Resources; Nancy Galvagni, KY Hospital Association; John Basham, KY Mental Health Consumer Association; Rick Cain, Pam Clay, Protection and Advocacy.

LRG Staff: Susan Wunderlich, Joe Hood, Gregory Karambellas, and Carla Arnold.

The Administrative Regulation Review Subcommittee met on December 5, 1988, and submits this report:

The Subcommittee determined that the following administrative regulations do not comply with KRS Chapter 13A or other applicable statutes as set forth below:

Revenue Cabinet: Department of Professional and Support Services: Ad Valorem Tax: Administration
103 KAR 5:140 (Property valuation

administrator qualification examination.) This regulation was amended by changing "will" and "may" to "shall" in several sections to conform with the requirements of KRS 13A.222. The Subcommittee attached a letter of objection to the amended regulation because it felt there were obvious differences between the statutory requirements and the regulation. KRS 132.380 directs the Revenue Cabinet to give the PVA exam in February and provides that candidates hold a certificate showing they have been examined and are qualified for the office prior to their name appearing on the ballot on election day. It also requires that if only one person qualifies in any given county, the Cabinet shall hold a second exam prior to the filing date. KRS 118.165 directs a candidate to file not less than 120 days before the primary. Section 3 of the regulation will allow no one to take the exam who hasn't filed for office. There is no requirement for a person to file for office in order to take the exam. Specifically KRS 132.380 states that any person desiring to take the exam shall appear at the time and place

designated. Furthermore, KRS 132.380(3) directs that special exams shall be held in the same manner as regular exams. The regulation allows special exams to be open to all residents of the county in which the vacancy has occurred, rather than just those who file for office.

Selective Excise Tax: Motor Vehicle Usage

103 KAR 43:290 (Dealer nonhighway use deduction.) KRS 138.270(1)(a) provides for the deduction of special fuels (as well as gasoline) from taxable fuels, and limits the deduction to fuels disposed of in a manner enumerated in KRS 138.240(2). No provision is made in KRS 138.240(2) for a deduction of special fuels disposed of for the purposes set forth in the regulation. All special fuels are presumed to be taxable under the provisions of KRS 138.224, unless the contrary is established by statute or by administrative regulation. The proposed regulation fails to explicitly state that special fuels used by dealers for nonhighway purposes, etc., are nontaxable, as required by KRS 138.224. The presumption is made that if the special fuels are deductible, they are nontaxable. The Subcommittee did not take this leap of presumption and attached a letter of objection that this regulation exceeded statutory authority.

103 KAR 43:300 (Dealer licensing.) This regulation was amended by deleting Sections 4, 5 and 6 of the regulation since these sections repeat, in part, the provisions of KRS 138.310, 138.320, 138.330 and 138.990, a violation of KRS 13A.120(1)(e)(f). The Subcommittee attached a letter of objection to the amended regulation because they found that the regulation exceeded statutory authority. KRS 138.210(2)(a) and (b) define 'gasoline dealer' and 'special fuels dealer', respectively. The definition of such dealers, provided for in Section 2 of this regulation, does not conform to the language of KRS 138.210(2)(a) and (b). An example of the lack of parallelism between the proposed regulation and the statute is the use of the term "regularly." "Regularly" is used in the regulation to establish a frequency of occurrence of activities qualifying a person for the designation of gasoline or special fuels dealer. No provision for frequency of occurrence is present in the statute. The proposed regulation also lists as qualifying activities, two activities not found in the statutory definition, viz, "Regularly importing nontaxpaid gasoline or special fuel into this state for distribution in bulk to others;" and "Regularly engaged in the business of distributing special fuels in bulk primarily to others in arms length transactions."

The Subcommittee determined that the following administrative regulations, as amended, complied with KRS Chapter 13A:

General Government Cabinet: Board of Medical Licensure

201 KAR 9:016 (Restrictions on use of amphetamine and amphetamine-like anorectic controlled substances.) This regulation was amended to delete the word "Ritalin" which is a brand name, and to replace it with the word "methylphenidate", which is the generic name.

Corrections Cabinet: Office of the Secretary
501 KAR 6:060 (Northpoint Training Center.)
 This regulation was amended by deleting NTC
 03-13-01 because the entire referenced policy is
 already found in the state travel regulation or
 a previously promulgated regulation.

Cabinet for Human Resources: Department for
 Health Services: Hospitalization of Mentally Ill
 and Mentally Retarded

902 KAR 12:020 (Patient's rights.) Pam Clay,
 Public Advocacy Office, and John Basham,
 citizen, appeared before the Subcommittee. This
 administrative regulation had been deferred from
 the November meeting to permit the agency and
 Ms. Clay to attempt to resolve disagreements.
 They had reached agreement on most of the items
 in disagreement at the November meeting of the
 Subcommittee: e.g., relating to language in
 Section 4 that appeared to permit a guardian to
 commit his ward without a KRS Chapter 202A
 proceeding, and that failed to provide for the
 statutory hearing in the case of voluntary
 commitments. The format of the amendments to
 this regulation was corrected to comply with KRS
 Chapter 13A and the amendments were approved by
 the Subcommittee. Ms. Clay felt that Section
 1(b) would permit the violation of a court order
 against certain forced treatments. She felt that
 existing language would permit the use of
 "emergency situations" as a means of
 circumventing a court order. Questions were
 raised as to whether certain treatments or the
 use of certain drugs that may not be permitted
 under an existing court order could be permitted
 in "emergency situations"; and whether a string
 of such emergency situations would result in a
 treatment plan not permitted under a court
 order. Ms. Clay expressed concern that
 additional language was required to insure that
 a patient has given informed consent prior to
 receiving electroshock, psychosurgery or
 psychoactive medication therapy. Representative
 Meyer stated that such therapy could be
 implemented only after a review and order by a
 court. Ms. Clay presented the Subcommittee with
 a statement detailing her objections to this
 administrative regulation. The Subcommittee had
 no objection to this administrative regulation.

The Subcommittee determined that the
 following regulations complied with KRS Chapter
 13A:

Revenue Cabinet: Department of Professional and
 Support Services: Selective Excise Tax: Motor
 Vehicle Usage

103 KAR 43:280 (Repeal of 103 KAR 43:150, 103
 KAR 43:160, and 103 KAR 43:170.)

General Government Cabinet: Board of Medical
 Licensure

201 KAR 9:041 (Fee schedule.)

Board of Occupational Therapy

201 KAR 28:140 (Grounds for denial, refusal to
 renew, suspension, revocation, or imposition of
 probationary conditions.)

Justice Cabinet: Local Alternatives to
 Detention Funds

500 KAR 7:020 (Local alternatives to detention
 funds.)

Corrections Cabinet: Office of the Secretary

501 KAR 6:040 (Kentucky State Penitentiary.)

501 KAR 6:130 (Western Kentucky Farm Center.)

Transportation Cabinet: Motor Vehicle
 Commission

605 KAR 1:020 (Motor vehicle auction dealer
 title transfer requirements.)

Education and Humanities Cabinet: Department of
 Education: Office of Local Services: School
 Terms, Attendance and Operation

702 KAR 7:065 (Designation of agent to manage
 high school interscholastic athletics.)

Cabinet for Human Resources: Department for
 Health Services: Emergency Medical Technicians

902 KAR 13:080 (Authorized procedures.)

State Health Plan

902 KAR 17:010 (State Health Plan.)

Controlled Substances

902 KAR 55:070 (Storage of controlled
 substances in an emergency.)

Department for Employment Services:

Unemployment Insurance

903 KAR 5:100 (Claimant's reporting
 requirements.)

Department for Social Insurance: Public
 Assistance

904 KAR 2:110 (Refugee assistance.)

904 KAR 2:116 (Low income home energy
 assistance program.)

Department for Medicaid Services: Medicaid
 Services

907 KAR 1:004 (Resource and income standard of
 medically needy.)

907 KAR 1:009 (Physicians' services.)

907 KAR 1:011 (Technical eligibility
 requirements.)

907 KAR 1:020 (Payment for drugs.)

907 KAR 1:054 (Primary care center services.)

907 KAR 1:055 (Payments for primary care
 center services.)

907 KAR 1:080 (Payments for rural health
 clinic services.)

907 KAR 1:082 (Rural health clinic services.)

907 KAR 1:251 (Repeal of 907 KAR 1:250.)

907 KAR 1:370 (Incorporation by reference of
 the Community mental Health Services Manual.)

907 KAR 1:372 (Incorporation by reference of
 the Mental Hospital Services Manual.)

907 KAR 1:374 (Incorporation by reference of
 the Skilled Nursing Facility Services Manual.)

907 KAR 1:376 (Incorporation by reference of
 the Hospital Services Manual.)

907 KAR 1:378 (Incorporation by reference of
 the Intermediate Care Facility Services Manual.)

907 KAR 1:380 (Incorporation by reference of
 the Ambulatory Surgical Center Services Manual.)

907 KAR 1:400 (Incorporation by reference of
 the Renal Dialysis Center Services Manual.)

907 KAR 1:402 (Incorporation by reference of
 the Physician Services Manual.)

907 KAR 1:404 (Incorporation by reference of
 the Independent Laboratory Services Manual.)

907 KAR 1:406 (Incorporation by reference of
 the Nurse Anesthetists Services Manual.)

907 KAR 1:408 (Incorporation by reference of
 the Nurse-Midwife Services Manual.)

907 KAR 1:410 (Incorporation by reference of
 the Vision Services Manual.)

907 KAR 1:412 (Incorporation by reference of
 the Podiatry Services Manual.)

907 KAR 1:414 (Incorporation by reference of
 the Dental Services Manual.)

907 KAR 1:416 (Incorporation by reference of
 the Pharmacy Services Manual.)

907 KAR 1:418 (Incorporation by reference of
 the Rural Health Clinic Services Manual.)

907 KAR 1:420 (Incorporation by reference of the Ambulance Transportation Services Manual.)
907 KAR 1:422 (Incorporation by reference of the Early and Periodic Screening, Diagnosis and Treatment Services (EPSDT) Manual.)
907 KAR 1:424 (Incorporation by reference of the Alternative Intermediate Services/Mental Retardation Services Manual.)
907 KAR 1:428 (Incorporation by reference of the Adult Day Health Care Services Manual.)
907 KAR 1:430 (Incorporation by reference of the Home Health Services Manual.)
907 KAR 1:432 (Incorporation by reference of the Home and Community Based Waiver Services Manual.)
907 KAR 1:434 (Incorporation by reference of the Family Planning Services Manual.)
907 KAR 1:436 (Incorporation by reference of the Hospice Services Manual.)
907 KAR 1:438 (Incorporation by reference of the Kentucky Medical Assistance Outpatient Drug List.)
907 KAR 1:440 (Case management services.)

The Subcommittee had no objections to emergency regulations which had been filed.

OTHER BUSINESS:

At its November meeting, the Subcommittee approved a motion by Representative Meyer directing staff to write to the Infrastructure Authority requesting information on implementation of its program without the promulgation of administrative regulations. The members of the Subcommittee were given copies of the letter to the Chairman of the Kentucky Infrastructure Authority.

Mr. Ben Lampton appeared before the Subcommittee. He informed the Subcommittee that retired county employees, whose jobs were classified as hazardous duty positions, had been notified that the Retirement System would pay the premium charged by Kentucky Kare; that if a retiree opted for another insurance plan, the system would pay only the amount it would have paid Kentucky Kare, with the remainder due being deducted from the retiree's check; that this action was being implemented as a policy and had not been promulgated as an administrative regulation. The Subcommittee approved a motion to inquire into this matter and instruct its staff to request an explanation of the action taken, and a statement of the reasons why no administrative regulations had been promulgated.

The Subcommittee adjourned at 2:45 p.m. until January 4, 1989.

OTHER COMMITTEE REPORTS

COMPILER'S NOTE: In accordance with KRS 13A.290(9), the following report(s) were forwarded to the Legislative Research Commission by the appropriate jurisdictional committee(s) and are hereby printed in the Administrative Register. The administrative regulations listed in each report became effective upon adjournment of the committee meeting at which they were considered.

INTERIM JOINT COMMITTEE ON HEALTH AND WELFARE
Meeting of November 16, 1988

The Interim Joint Committee on Health and Welfare met on Wednesday, November 16, 1988.

The Secretary of the Cabinet for Human Resources submitted a suggested amendment to 907 KAR 1:036 relating to Medicaid reimbursement of respiratory therapy provided by intermediate care and skilled nursing care facilities.

The Committee took no action on the following regulations:

902 KAR 4:050 & E
904 KAR 3:060 & E
907 KAR 1:013 & E
907 KAR 1:036 & E

The Committee adjourned at 4:00 p.m. until December 16, 1988.

INTERIM JOINT COMMITTEE ON
AGRICULTURE AND NATURAL RESOURCES
Meeting of November 23, 1988

The Interim Joint Committee on Agriculture and Natural Resources met Wednesday, November 23, 1988, and submits this report:

The committee determined that administrative regulation 301 KAR 1:200 does not comply with KRS Chapter 13A or other applicable statutes and objected to the provision increasing the size limit for taking largemouth and smallmouth bass in Cumberland Lake.

The committee determined that the following administrative regulations comply with KRS Chapter 13A:

12 KAR 5:010	12 KAR 5:070
12 KAR 5:020	301 KAR 1:085
12 KAR 5:030	301 KAR 1:146
12 KAR 5:040	301 KAR 1:150
12 KAR 5:050	301 KAR 2:220
12 KAR 5:060	301 KAR 4:070

The committee deferred administrative regulation 301 KAR 2:140 pursuant to KRS 13A.290(4).

The committee did not consider 301 KAR 3:021 and the Administrative Regulation Review Subcommittee had previously objected to it.

The committee did not have objections to emergency regulations which had been filed.

The committee adjourned at 1:55 p.m., November 23, 1988.

INTERIM JOINT COMMITTEE ON
AGRICULTURAL & NATURAL RESOURCES
Meeting of December 13, 1988

The Interim Joint Committee on Agriculture and Natural Resources met Tuesday, December 13, 1988, and submits this report:

The committee determined that the following administrative regulations comply with KRS Chapter 13A:

301 KAR 2:140	405 KAR 16:120
405 KAR 7:015	405 KAR 16:150
405 KAR 7:020	405 KAR 16:190
405 KAR 7:030	405 KAR 18:010
405 KAR 7:090	405 KAR 18:070
405 KAR 8:020	405 KAR 18:080
405 KAR 8:050	405 KAR 18:100
405 KAR 10:010	405 KAR 18:110
405 KAR 10:020	405 KAR 18:120
405 KAR 10:030	405 KAR 18:150
405 KAR 10:050	405 KAR 18:190
405 KAR 16:010	405 KAR 20:010
405 KAR 16:070	405 KAR 20:060
405 KAR 16:080	405 KAR 24:020
405 KAR 16:100	405 KAR 24:030
405 KAR 16:110	405 KAR 24:040

The committee deferred administrative regulation 405 KAR 10:040 pursuant to KRS 13A.300.

The committee considered 405 KAR 8:010 but took no action, and the Administrative Regulation Review Subcommittee had previously objected to it.

The committee adjourned at 4:40 p.m., December 13, 1988.

INTERIM JOINT COMMITTEE ON HEALTH & WELFARE
Meeting of December 13, 1988

The Interim Joint Committee on Health and Welfare met on Tuesday, December 13, 1988, and submits this report.

The Committee determined that the following regulations complied with KRS Chapter 13A:

201 KAR 9:016	907 KAR 1:400
902 KAR 12:020	907 KAR 1:402
902 KAR 13:080	907 KAR 1:404
902 KAR 17:010 and E	907 KAR 1:406
902 KAR 55:070	907 KAR 1:408
904 KAR 2:110 and E	907 KAR 1:410
907 KAR 1:004 and E	907 KAR 1:412
907 KAR 1:009 and E	907 KAR 1:414
907 KAR 1:011 and E	907 KAR 1:416
907 KAR 1:020 and E	907 KAR 1:418
907 KAR 1:054 and E	907 KAR 1:420
907 KAR 1:055 and E	907 KAR 1:422
907 KAR 1:080 and E	907 KAR 1:424

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907 KAR 1:082 and E	907 KAR 1:428
907 KAR 1:251	907 KAR 1:430
907 KAR 1:370	907 KAR 1:432
907 KAR 1:372	907 KAR 1:434
907 KAR 1:374	907 KAR 1:436
907 KAR 1:376	907 KAR 1:438
907 KAR 1:378	907 KAR 1:440 and E
907 KAR 1:380	

The Committee did not have objections to
emergency regulations which had been filed.

CUMULATIVE SUPPLEMENT

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Subject Index to Volume 14.....	G17

LOCATOR INDEX -- EFFECTIVE DATES

NOTE: Emergency regulations expire 90 days from publication or upon replacement or repeal.

VOLUME 14

Regulation	14 Ky.R. Page No.	Effective Date	Regulation	14 Ky.R. Page No.	Effective Date
102 KAR 7:090 Amended	1651	(See 15 Ky.R.)	704 KAR 15:080 Amended	1652	(See 15 Ky.R.)

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Emergency Regulation	15 Ky.R. Page No.	Effective Date	Emergency Regulation	15 Ky.R. Page No.	Effective Date
101 KAR 1:325E Replaced	107 950	6-16-88 9-14-88	501 KAR 6:110E Replaced	781 525	7-19-88 9-13-88
105 KAR 1:010E Replaced	108 31	6-22-88 8-10-88	501 KAR 6:130E Replaced	8 41	6-14-88 8-17-88
106 KAR 1:060E Replaced	911 1465	9-14-88 11-9-88	501 KAR 6:140E Replaced	783 530	7-19-88 9-13-88
107 KAR 1:050E Replaced	3 97	6-10-88 8-17-88	501 KAR 9:010E Replaced	144 716	6-20-88 9-13-88
201 KAR 8:400E	3	6-13-88	501 KAR 9:020E Replaced	145 954	6-20-88 9-13-88
201 KAR 8:410E	4	6-13-88	501 KAR 9:030E Replaced	146 719	6-20-88 9-13-88
201 KAR 9:175E Replaced	777 891	7-27-88 10-14-88	501 KAR 9:040E Replaced	147 720	6-20-88 9-13-88
201 KAR 10:050E Replaced	5 950	6-2-88 9-9-88	501 KAR 9:050E Replaced	147 956	6-20-88 9-13-88
201 KAR 26:240E Replaced	250	4-14-88 8-5-88	501 KAR 9:060E Replaced	150 725	6-20-88 9-13-88
301 KAR 2:044E Replaced	913 1251	8-16-88 10-26-88	501 KAR 9:070E Replaced	151 726	6-20-88 9-13-88
301 KAR 2:220E Replaced	1207 1136	9-23-88 11-23-88	501 KAR 9:080E Replaced	152 727	6-20-88 9-13-88
301 KAR 2:240E Replaced	914 842	8-16-88 10-26-88	501 KAR 9:090E Replaced	153 958	6-20-88 9-13-88
302 KAR 20:056E Replaced	110 275	6-27-88 9-28-88	501 KAR 9:100E Replaced	154 959	6-20-88 9-13-88
401 KAR 30:010E Replaced	111 315	7-14-88 10-26-88	501 KAR 9:110E Replaced	154 731	6-20-88 9-13-88
401 KAR 31:020E Replaced	121 337	7-14-88 10-26-88	501 KAR 9:120E Replaced	155 959	6-20-88 9-13-88
401 KAR 32:040E Replaced	122 341	7-14-88 10-26-88	501 KAR 9:130E Replaced	156 734	6-20-88 9-13-88
401 KAR 34:090E Replaced	123 343	7-14-88 10-26-88	501 KAR 9:140E Replaced	156 735	6-20-88 9-13-88
401 KAR 35:070E Replaced	131 351	7-14-88 10-26-88	501 KAR 9:150E Replaced	158 960	6-20-88 9-13-88
401 KAR 35:090E Replaced	137 358	7-14-88 10-26-88	600 KAR 1:080E Replaced	161 44	7-1-88 9-2-88
401 KAR 63:045E	1212	10-5-88	600 KAR 2:020E Replaced	161 532	7-1-88 10-4-88
401 KAR 63:050E	1215	10-5-88	601 KAR 1:005E Withdrawn	9	6-1-88 8-15-88
501 KAR 1:030E Replaced	915 1467	9-14-88 12-2-88	Resubmitted	785	8-15-88
501 KAR 1:040E Replaced	918 1190	9-14-88 12-2-88	Replaced	816	10-4-88
501 KAR 1:050E Replaced	921 1193	9-14-88 12-2-88	601 KAR 13:020E Replaced	162 541	7-15-88 10-4-88
501 KAR 6:020E Replaced	6 951	6-14-88 8-16-88	603 KAR 5:072E Replaced	11 806	6-14-88 9-2-88
501 KAR 6:030E Replaced	922 846	8-16-88 10-11-88	603 KAR 5:230E	1394	10-26-88
501 KAR 6:070E	924	9-14-88	702 KAR 7:065E	1220	9-23-88
501 KAR 6:080E	1147	12-2-88	704 KAR 5:060E	1220	9-23-88
Replaced	1393	11-10-88	Replaced	1194	12-2-88
	7	6-14-88	705 KAR 5:140E	164	7-15-88
	41	8-17-88	Replaced	744	10-7-88

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Emergency Regulation	15 Ky.R. Page No.	Effective Date	Emergency Regulation	15 Ky.R. Page No.	Effective Date
707 KAR 1:110E	165	7-15-88	904 KAR 2:116E	224	7-13-88
Withdrawn		7-25-88	Replaced	658	9-21-88
Resubmitted	787	7-25-88	Resubmitted	1223	10-10-88
Replaced	1104	11-4-88	904 KAR 3:020E	1451	10-31-88
803 KAR 25:011E		4-19-88	Expired		12-15-88
Replaced	250	8-5-88	904 KAR 3:060E	937	9-14-88
803 KAR 25:025E	791	7-25-88	Replaced	1475	11-16-88
Replaced	1471	12-2-88	906 KAR 1:040E	804	7-15-88
803 KAR 25:080E	169	7-13-88	Replaced	767	11-4-88
Expired		11-3-88	907 KAR 1:004E	227	7-1-88
806 KAR 4:010E	174	7-15-88	Replaced	664	9-21-88
Replaced	1113	11-4-88	Resubmitted	1226	10-7-88
806 KAR 13:110E	175	7-15-88	Replaced	1308	12-13-88
Replaced	755	10-7-88	907 KAR 1:008E	233	7-1-88
806 KAR 17:065E	1629	11-23-88	Replaced	670	9-21-88
901 KAR 5:110E	176	7-13-88	907 KAR 1:009E	1233	10-7-88
Replaced	757	9-21-88	Replaced	1315	12-13-88
902 KAR 2:110E	794	7-15-88	907 KAR 1:010E	1234	10-7-88
Replaced	1115	11-4-88	Expired		12-6-88
902 KAR 2:120E	794	7-15-88	Resubmitted	1642	12-6-88
Replaced	1115	11-4-88	907 KAR 1:011E	1235	10-7-88
902 KAR 3:060E	177	6-20-88	Replaced	1318	12-13-88
Replaced	54	8-31-88	907 KAR 1:013E	233	7-1-88
902 KAR 3:075E	178	6-20-88	Expired		8-30-88
Replaced	57	8-31-88	Resubmitted	939	8-30-88
902 KAR 3:115E	179	6-20-88	Replaced	1171	11-16-88
Replaced	60	8-31-88	907 KAR 1:015E	235	7-1-88
902 KAR 3:205E	181	6-20-88	Replaced	674	9-21-88
Replaced	62	8-31-88	907 KAR 1:020E	236	7-1-88
902 KAR 3:210E	182	7-1-88	Replaced	975	9-21-88
Replaced	63	8-31-88	Resubmitted	1239	10-7-88
902 KAR 3:225E	184	6-20-88	Replaced	1322	12-13-88
Replaced	66	8-31-88	907 KAR 1:028E	237	7-1-88
902 KAR 3:250E	185	6-20-88	Replaced	676	9-21-88
Replaced	69	8-31-88	907 KAR 1:029E	238	7-1-88
902 KAR 4:050E	926	9-15-88	Replaced	678	9-21-88
Replaced	1156	11-16-88	907 KAR 1:031E	238	7-1-88
902 KAR 10:021E		4-15-88	Replaced	678	9-21-88
Replaced	17	6-22-88	907 KAR 1:036E	240	7-1-88
902 KAR 10:081E	186	7-13-88	Expired		8-30-88
Replaced	619	9-21-88	Resubmitted	942	8-30-88
902 KAR 10:085E	194	7-13-88	Replaced	1477	11-16-88
Replaced	628	9-21-88	907 KAR 1:042E	247	7-1-88
902 KAR 10:130E		4-15-88	Replaced	688	9-21-88
Replaced	17	6-22-88	907 KAR 1:054E	1240	10-7-88
902 KAR 17:010E	214	7-6-88	Replaced	1324	12-13-88
Expired		9-7-88	907 KAR 1:055E	1242	10-7-88
Resubmitted	1220	9-21-88	Replaced	1326	12-13-88
Replaced	1296	12-13-88	907 KAR 1:080E	1244	10-7-88
902 KAR 20:016E	926	9-15-88	Replaced	1328	12-13-88
Expired		11-4-88	907 KAR 1:082E	1244	10-7-88
Resubmitted	1440	11-15-88	Replaced	1329	12-13-88
902 KAR 45:120E		4-15-88	907 KAR 1:170E	247	7-1-88
Replaced	258	8-3-88	Replaced	689	9-21-88
902 KAR 50:120E	214	7-15-88	907 KAR 1:210E	1643	12-6-88
Replaced	987	9-21-88	907 KAR 1:360E	248	7-1-88
903 KAR 5:260E	11	5-20-88	Replaced	768	10-21-88
Replaced		8-5-88	907 KAR 1:440E	1245	10-7-88
903 KAR 5:270E	218	6-20-88	Replaced	1380	12-13-88
Replaced	93	8-5-88			
904 KAR 2:015E	1639	12-13-88	Regulation	15 Ky.R. Page No.	Effective Date
904 KAR 2:016E	219	7-1-88	11 KAR 3:020		
Withdrawn		8-9-88	Repealed	880	11-4-88
Resubmitted	795	8-11-88	11 KAR 3:030		
Replaced	869	11-4-88	Repealed	880	11-4-88
904 KAR 2:022E	800	7-25-88	11 KAR 3:040		
Replaced	875	11-4-88	Repealed	880	11-4-88
904 KAR 2:110E	1221	10-6-88	11 KAR 3:050		
Replaced	1300	12-13-88	Repealed	880	11-4-88
			Repealed	880	11-4-88

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Regulation	15 Ky.R. Page No.	Effective Date	Regulation	15 Ky.R. Page No.	Effective Date
11 KAR 3:060	880	11-4-88	103 KAR 16:130		
11 KAR 5:010			Amended	273	9-22-88
Amended	1486		103 KAR 16:145	691	9-22-88
11 KAR 5:030			103 KAR 35:030	1724	
Amended	1487		103 KAR 43:010		
11 KAR 5:110	884	11-4-88	Amended	1661	
11 KAR 5:120	1599		103 KAR 43:020		
11 KAR 5:130	1600		Amended	1662	
11 KAR 5:140	1601		103 KAR 43:030		
11 KAR 5:150	1604		Amended	1663	
11 KAR 5:160	1605		103 KAR 43:050		
11 KAR 5:170	1607		Amended	1665	
11 KAR 5:180	1609		103 KAR 43:060		
11 KAR 5:190	1611		Amended	1666	
12 KAR 5:010			103 KAR 43:070		
Amended	1118	11-23-88	Amended	1667	
12 KAR 5:020			103 KAR 43:080		
Amended	1118	11-23-88	Amended	1667	
12 KAR 5:030			103 KAR 43:090		
Amended	1120		Amended	1668	
As Amended	1456	11-23-88	103 KAR 43:100		
12 KAR 5:040			Amended	1669	
Amended	1122	11-23-88	103 KAR 43:110		
12 KAR 5:050			Amended	1670	
Amended	1123	11-23-88	103 KAR 43:120		
12 KAR 5:060			Amended	1671	
Amended	1124	11-12-88	103 KAR 43:130		
12 KAR 5:070			Amended	1672	
Amended	1125	11-23-88	103 KAR 43:140		
101 KAR 1:305	1714		Amended	1674	
101 KAR 1:315	1714		103 KAR 43:230		
101 KAR 1:320			Amended	1675	
Amended	264	11-9-88	103 KAR 43:250	96	8-25-88
101 KAR 1:325			103 KAR 43:260	96	*(No eff. date)
Amended	266		*Since statement of consideration was not received by 15th day following hearing, regulation must be refiled (KRS 13A.280)		
As Amended	950	9-14-88	103 KAR 43:270	890	10-27-88
Amended	1659		103 KAR 43:280	1332	
101 KAR 1:335	1715		103 KAR 43:290	1333	
101 KAR 1:345	1717		103 KAR 43:300	1334	
101 KAR 1:360			As Amended	1645	
Amended	267	11-9-88	103 KAR 44:030	1613	
101 KAR 1:365	1719		Withdrawn		12-12-88
101 KAR 1:375	1721		105 KAR 1:010		
101 KAR 1:395	1724		Amended	31	8-10-88
101 KAR 2:030			106 KAR 1:030		
Amended	819		Repealed	1465	11-9-88
As Amended	1247	10-12-88	106 KAR 1:060	1182	
101 KAR 2:090			As Amended	1465	11-9-88
Amended	822	10-12-88	106 KAR 1:070	1615	
As Amended	1250		107 KAR 1:050	97	8-17-88
101 KAR 2:100			200 KAR 3:045		
Amended	824	11-9-88	Amended	1126	
As Amended	1457		As Amended	1467	12-2-88
101 KAR 2:110			201 KAR 2:130		
Amended	829	11-9-88	Amended	837	
101 KAR 2:120			201 KAR 8:400	99	10-14-88
Amended	830	10-12-88	201 KAR 8:410	99	10-14-88
101 KAR 2:140	886	10-12-88	201 KAR 9:016		
101 KAR 2:150	888	10-12-88	Amended	1286	
101 KAR 2:160	889	10-12-88	As Amended	1645	12-13-88
101 KAR 3:010			201 KAR 9:041		
Amended	833		Amended	1287	
As Amended	1461	11-9-88	201 KAR 9:083		
103 KAR 5:140	1331		Repealed	777	7-27-88
As Amended	1644		201 KAR 9:175	891	10-14-88
103 KAR 8:100	1612		201 KAR 10:050		
Withdrawn		12-12-88	Amended	33	
103 KAR 16:100			As Amended	950	9-9-88
Amended	271	9-22-88	201 KAR 12:065		
103 KAR 16:110			Amended	1676	
Amended	272	9-22-88			

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Regulation	15 Ky.R. Page No.	Effective Date	Regulation	15 Ky.R. Page No.	Effective Date
201 KAR 12:190	1726		401 KAR 5:005		
201 KAR 20:161			Amended	282	
Amended	838	10-14-88	Amended	1005	
201 KAR 20:330			As Amended	1257	10-26-88
Amended	1677		401 KAR 5:010		
201 KAR 22:040			Amended	285	
Amended	1128	11-11-88	Amended	1007	10-26-88
201 KAR 22:110			401 KAR 5:085		
Amended	1129	11-11-88	Amended	289	
201 KAR 26:121	1727		Amended	1010	
201 KAR 26:160			As Amended	1259	10-26-88
Amended	1678		401 KAR 6:015		
201 KAR 26:171			Amended	292	
Amended	1679		Amended	1012	10-26-88
201 KAR 26:190			401 KAR 6:030		
Amended	1681		Implied repeal		7-15-88
201 KAR 26:200			401 KAR 6:040		
Amended	1682		Amended	309	
201 KAR 26:210			Amended	1028	10-26-88
Amended	1683		401 KAR 6:300		
201 KAR 26:230			Amended	314	
Amended	1685		Amended	1032	
201 KAR 26:240			As Amended	1261	10-26-88
As Amended	250	8-5-88	401 KAR 30:010		
201 KAR 28:140			Amended	315	10-26-88
Amended	1288		401 KAR 31:010		
301 KAR 1:085			Amended	327	10-26-88
Amended	1130	11-23-88	401 KAR 31:020		
301 KAR 1:145			Amended	337	10-26-88
Repealed	1184	11-23-88	401 KAR 32:010		
301 KAR 1:146	1184	11-23-88	Amended	339	10-26-88
301 KAR 1:150			401 KAR 32:040		
Amended	1131	11-23-88	Amended	341	10-26-88
301 KAR 1:200			401 KAR 34:090		
Amended	1132	11-23-88	Amended	343	10-26-88
301 KAR 2:044			401 KAR 35:070		
Amended	840		Amended	351	10-26-88
As Amended	1251	10-26-88	401 KAR 35:090		
301 KAR 2:140			Amended	358	10-26-88
Amended	1134	12-13-88	401 KAR 39:010		
301 KAR 2:220			Amended	365	10-26-88
Amended	1136	11-23-88	401 KAR 39:020		
301 KAR 2:240			Amended	367	
Amended	842	10-26-88	Amended	1033	
301 KAR 3:021			As Amended	1261	10-26-88
Amended	1142	11-23-88	401 KAR 39:030		
301 KAR 4:070	895		Amended	369	
Amended	1278	11-23-88	Amended	1033	
301 KAR 4:080	898	10-26-88	As Amended	1262	10-26-88
302 KAR 15:030			401 KAR 39:060		
Amended	843	10-26-88	Amended	371	
302 KAR 16:010			Amended	1034	
Amended	845	10-26-88	As Amended	1263	10-26-88
302 KAR 20:056			401 KAR 39:070		
Amended	275	9-28-88	Amended	372	
306 KAR 2:010	692	10-7-88	Amended	1034	
307 KAR 1:010			As Amended	1263	10-26-88
Amended	276	10-7-88	401 KAR 39:080		
401 KAR 4:100			Amended	374	10-26-88
Amended	281		401 KAR 39:090		
Amended	991	10-26-88	Amended	375	
401 KAR 4:110	693		Amended	1035	
Amended	991	10-26-88	As Amended	1264	10-26-88
401 KAR 4:120	695		401 KAR 39:110	713	
Amended	993		As Amended	1265	10-26-88
As Amended	1252	10-26-88	401 KAR 39:120	715	
401 KAR 4:130	703		Amended	1036	
Amended	998	10-26-88	As Amended	1265	10-26-88
401 KAR 4:140	706		401 KAR 47:060		
Amended	1000	10-26-88	Amended	377	
			Amended	1037	
			As Amended	1266	10-26-88

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Regulation	15 Ky.R. Page No.	Effective Date	Regulation	15 Ky.R. Page No.	Effective Date
401 KAR 50:015			405 KAR 18:120		
Amended	379	10-26-88	Amended	491	12-13-88
401 KAR 50:036			405 KAR 18:150		
Amended	384		Amended	496	12-13-88
Amended	1038		405 KAR 18:190		
As Amended	1267	10-26-88	Amended	498	
401 KAR 63:045	1335		Amended	1089	12-13-88
Amended	1651		405 KAR 20:010		
401 KAR 63:050	1341		Amended	502	12-13-88
Amended	1654		405 KAR 20:060		
405 KAR 7:015			Amended	505	12-13-88
Amended	390	12-13-88	405 KAR 24:020		
405 KAR 7:020			Amended	508	12-13-88
Amended	392		405 KAR 24:030		
Amended	1041	12-13-88	Amended	511	12-13-88
405 KAR 7:030			405 KAR 24:040		
Amended	402	12-13-88	Amended	515	12-13-88
405 KAR 7:090			500 KAR 7:020	1348	
Amended	404		501 KAR 1:011		
Amended	1049	12-13-88	Repealed	915	9-14-88
405 KAR 8:010			501 KAR 1:015		
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Amended	1151	12-2-88	Repealed	1394	10-26-88
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806 KAR 17:060			Amended	619	9-28-88
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806 KAR 17:065			Amended	628	9-28-88
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807 KAR 5:069			Amended	1283	
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